A-59-8914

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

RECD
APPELLATE DIVISION
JUL 11 1990
Clerk

STATE OF NEW JERSEY,

vs.

RICHARD HIGHLANDER,

Defendant.

Transcript of
Pretrial Motions

FILED
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June 8, 1989
Atlantic County Courthouse
Mays Landing, New Jersey

B E F O R E:

HONORABLE STEVEN P. PERSKIE, J.S.C.

ORDERED BY: JAMES JUKES

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

MURRAY TALASNIK, ESQUIRE
Assistant County Prosecutor
Attorney for the State

OFFICE OF THE PUBLIC DEFENDER
BY: NATHAN DAVIS, ESQUIRE
and MICHAEL PRESTON, ESQUIRE
Attorneys for Defendant

CONSTANCE S. KENT, CSR
OFFICIAL COURT REPORTER

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I N D E X

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THE COURT: All right. Good morning, everybody. Before we commence with the taking of testimony in the next proffer, let me just discuss for a brief moment the followup on our conversation last night regarding the question of prior record.

Now, we discussed this briefly this morning with counsel in chambers. I don't propose that we need to do anything on the record in front of the jury until it gets to that point in the evidence, wherever it is. I'm not suggesting that, although opening comments you may want to -- either of you make such comments on the general area as you think appropriate and as you believe to be consistent with what the evidence will reveal, but in general, I am satisfied, on the basis of my limited knowledge at the moment, that there may be a proper evidential use of the fact that at the time of the incident here, the defendant was, in fact, on probation in the Superior Court for several offenses, and further that it may also be competent and relevant for the jury to know that in the event of a determination by the Court of a violation of the terms of that probation, that the defendant could have been

sentenced on that violation anything from a continuation of probation under appropriate terms and conditions, all the way up to a term in State prison of as much as ten years.

I don't think on the basis of what I now know that it's particularly relevant, absent any other factors, that the jury be advised as to the nature of the offenses for which he had been placed on probation, or even the time and the circumstances of the probation, simply that at the time of this -- the incident charged in this indictment -- and by the way, what is the date charged in the indictment?

MR. TALASNIK: The date, your Honor, is April 25, 1988.

THE COURT: Okay. At -- in April of -- on April 25th, '88, that he was, in fact, on that probation under those conditions. That's my thinking at the moment. Does either of you have anything that you would like to add, correct or detract from any of that?

MR. PRESTON: May I ask the Court if there's any particular relevance in the number of offenses for which he was on probation for?

THE COURT: Not that I know of.

MR. PRESTON: Then perhaps what I understand is the only relevance would be the fact of probation and possibly some kind of exposure, but the number and the type of offenses would be irrelevant?

THE COURT: I would think so. Now, again, we're not talking about any consequences that we've already ruled on about what happens if the defendant takes the stand or whether any other content of any record of prior convictions may be admissible on the question of credibility. That's not before me in this discussion. I'm only talking about whether the fact of his having been on probation is -- can be shown to the jury.

It comes up, for example, or it did yesterday in at least two different situations, first in Davis' testimony of what the defendant told him, and second -- where else did it come up? It came up once -- it had come up -- I don't remember. But when I heard it from Davis yesterday was the second time I had occasion to think about it. I think I mentioned on the record the first time. I don't remember. Was it in the context of my concern over the contents of S-1? I don't remember. Be that as it may --

MR. TALASNIK: I think it was, your Honor, because you told me that to the extent that the documents themselves might be admissible, there would have to be a deletion of the --

THE COURT: Reference to the violations of probation.

MR. TALASNIK: Exactly.

THE COURT: That might have been the context. Whatever it was, I generally agree that at the appropriate time my instruction to the jury should be to the effect that he was on probation, that the nature of the offenses -- offense or offenses for which he was on probation is not before us and is not relevant and you need not speculate, that if he had been found in violation of that probation at the time that he was on it, that a possible sentence for that, we never know, obviously without checking -- without -- we would never know specifically what the sentence would be, but the range of possible sentences that could have been imposed would have been anything from a continuation on probation under certain terms and conditions all the way up to a term of imprisonment in the State prison up to ten years.

MR. PRESTON: Judge, I detect another

problem here. It's one thing for Mr. Talasnik to submit it to the jury as part of his proofs, as part of a fact which he wants the jury to believe, it's quite another for the Judge to instruct the jury that the fact exists.

THE COURT: No, no. I would not instruct the jury that he was on probation, although I think I could because it's a fact which I could take judicial notice.

MR. PRESTON: Could the jury take judicial notice?

THE COURT: The jury can take notice of anything I can take judicial notice. Judicial notice is an arm of the Court, and the jury is the arm of the Court in this case. I'm not going to do that. I'm not going to take judicial notice of a fact which, in this instance I agree with you, the State should prove. On the other hand, I'm not going to permit the State to adduce proofs on the question of the consequences of the violation of probation. I'm going to instruct that to the jury because I don't think that's a proper subject of proofs.

MR. PRESTON: In terms of --

THE COURT: That's a statement of the

law. What I'm contemplating is that the State would in some appropriate fashion adduce evidence that he was on probation at that point. At that point, I could explain to the jury essentially what I've outlined just now. That's my general thinking on the subject. None of those is a specific ruling and we can continue to discuss it if any of you gets any additional thoughts.

MR. PRESTON: I'm sorry I misinterpreted your Honor's intent.

THE COURT: No, I just -- again, my -- this is all under the heading of giving everybody as much opportunity to think about things in advance as possible. I have always found, at least for myself, that the more time I've had to think about something, in general, the better my decision winds up being. Therefore, I impose that on everybody.

Anything else before we proceed?

Okay. As I understand it, we have completed the determinations as to the first two items in Mr. Talasnik's December 12 letter. I am up now to number three, which is an interview in South Carolina on May 13.

Mr. Talasnik, you may proceed.

MR. TALASNIK: Thank you, your Honor. State would call Investigator Al Juliano.

ALRED E. JULIANO, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. TALASNIK:

Q. Investigator Juliano, tell us where you are employed.

A. I'm employed by the Atlantic County Prosecutor's Office, currently assigned to the Major Crimes Squad.

Q. How long have you been employed with the Prosecutor's Office?

A. Approximately two years and eight months.

Q. And how much of that time has been spent with the Major Crimes Squad?

A. The entirety.

Q. What law enforcement experience did you have prior to this hire?

A. 15 years prior to my work with the Prosecutor's Office, in municipal police departments and county police agencies.

Q. During the course of that employment and the course of your employment with the Major Crimes Squad, have you had occasion to become involved in criminal investigations?

A. Yes, sir, I have.
Q. Now, with respect to the Major Crimes Squad, is there a particular type of criminal investigation that is specialized in?
A. Yes, sir. The only thing we do is homicide.
Q. And for that period of time, therefore, you have been exclusively involved in investigation of criminal homicides?
A. That's correct, sir.
Q. Were you so involved in the months of April and May of 1988?
A. Yes, sir, I was.
Q. During those months, did you become involved in an investigation into the death of Gloria Simonelli?
A. Yes, sir.
Q. At what point did you become involved in that investigation?
A. From the initial call out on April 25th, 1988, I, along with other members of the Major Crimes Squad, responded to the Greenhouse Restaurant in Margate.
Q. Did you continue to work actively on the criminal investigation from that point through the

arrest of a suspect?
A. Yes, sir, I did.
Q. During the course of your involvement, was evidence adduced that gave rise to the preparation and signing of a complaint against the suspect for murder?
A. Yes, sir.
Q. Who was the suspect named on the complaint?
A. Richard Lee Highlander.
Q. Were you contacted by authorities in the State of South Carolina during May of 1988 regarding the possible location of this suspect, Richard Lee Highlander within their jurisdiction?
A. Yes, sir.
Q. What was the nature of the contact that you got beginning with the 12th of May?
A. The 12th of May, the FBI office in Columbia, South Carolina notified us that they had picked up Richard Lee Highlander.
Q. And had there been some kind of a federal warrant, in addition to the state warrant, that authorized his apprehension?
A. Yes, sir. We had requested that an unlawful flight to avoid prosecution warrant be issued by the U.S. Magistrate and one subsequently

was. They were executing that warrant.
Q. After you were notified by the Federal Bureau of Investigations officers on the 12th of May, 1988 that Mr. Highlander had been arrested, were arrangements made for you to travel to South Carolina?
A. Yes, sir, immediately.
Q. Why were arrangements made for you to go there?
A. We were -- Lt. Welsh and I -- from Margate, and I were the case investigators. We were to extradite Mr. Highlander back to New Jersey and also for the purposes of an interview.
Q. When you arrived in South Carolina on Friday the 13th of May, 1988, where was your first stop?
A. First stop was a place to sleep, that was in the early morning hours of the 13th, from the airport to a hotel.
Q. And from there?
A. When we awoke, we spoke to the FBI office at approximately ten a.m. to meet with Special Agent Davis.
Q. Did you have a discussion with Special Agent Davis regarding the circumstances of the

arrest of Mr. Highlander?
A. Yes, sir, we did.
Q. And did he relate to you the circumstances of that arrest?
A. Yes, sir.
Q. Did you have any discussion with him about whether, at the time of his arrest, Mr. Highlander was advised of his Constitutional rights?
A. Yes, sir, we did.
Q. And did they satisfy you that that had, in fact, occurred?
A. Yes, sir. Special Agent Davis stated that Mr. Highlander was, indeed, advised of his Miranda warnings.
Q. Was there further discussion about whether Mr. Highlander had agreed to be interviewed?
A. Yes, sir.
Q. And what information was given to you by Agent Davis in that regard?
MR. DAVIS: I object to this line of questioning.
THE COURT: What's the proffer, Mr. Talasnik? Is this witness going to tell me that when he interviewed him, he did or did not readvise of his rights?

MR. TALASNIK: There will be evidence of a readvisement, your Honor. Simply --

THE COURT: Then what's this proffer about?

MR. TALASNIK: Just to show a continuing compliance with the requirements of Miranda.

THE COURT: I'll sustain the objection. I think that I've already ruled as to what happened on the 12th. I'll make a determination of what happened on the 13th on the basis of this witness' testimony, but not on the basis of what this witness tells me Davis told him about what happened on the 12th, which I've already heard from Davis.

MR. TALASNIK: Very well, your Honor.

BY MR. TALASNIK:

Q. After visiting with Officer Davis, where did you next go?

A. We accompanied Special Agent Davis and Clemmens of the FBI to the Richland County Jail in separate vehicles.

Q. For what purpose?

A. Richard Lee Highlander was scheduled for a

extradition hearing in front of a federal judge at that time.

Q. Okay. Now, did you have occasion to actually see Mr. Highlander that morning at the Richland County Jail?

A. Briefly. As he got into the car, the agents --

Q. Were you able to identify him as being the Richard Lee Highlander who was named on the arrest warrant?

A. Yes, sir.

Q. And is that person in the courtroom today?

A. Yes, sir, he is.

Q. Could you identify him, please?

A. Sitting between counsel wearing blue jeans.

THE COURT: The record will reflect the identification of the witness here and the fact yesterday that the defendant admitted he was the one in South Carolina.

BY MR. TALASNIK:

Q. How did he appear to be at the brief encounter at the Richland County Jail?

A. That encounter was very brief and he appeared fine. There was only a second or two that I saw him.

Q. When was the next time you saw Mr. Highlander that morning?
A. At the U.S. Courthouse at approximately 11 a.m.
Q. And do you recall what went on at the federal courthouse?
A. This, I believe, was an extradition hearing. Mr. Highlander was seated in front of me, his back toward me. At that time, the Judge or magistrate advised Mr. Highlander that he had the right to waive extradition or to fight it.
Q. Okay. How did Mr. Highlander appear to you in the courtroom setting?
A. He was quiet, responsive to questions he was asked by the magistrate.
Q. Were there occasions where the federal magistrate addressed questions to him?
A. Yes, sir.
Q. Were you able to hear whether Mr. Highlander could respond to them orally?
A. Yes, he could and he did.
Q. And he did. Okay. Was he accompanied by anyone there, if you recall?
A. There was a woman sitting next to him whom I was told later was a Public Defender, federal

Public Defender.

Q. After that hearing was completed, what was the next thing that you recall?

A. Deputy U.S. Marshall escorted Mr. Highlander to the Richland County Courthouse. Apparently, Mr. Highlander had been charged in a State fugitive warrant and there was an extradition hearing at that time at the Richland County Courthouse.

Q. While in the federal courthouse or in transit between the federal courthouse and the state courthouse, did you have any contact with Mr. Highlander?

A. He was transported in another vehicle from the federal courthouse to the state.

Q. Okay. Were you physically present for the hearing in the state court, Richland County?

A. Yes, sir, I was.

Q. Generally what went on there?

A. Again, it was a very small room there and not a lot of people. The Judge advised Mr. Highlander what the charges were, what his rights were as far as waiving them or fighting extradition.

Q. Did you have a chance to observe Mr.

Highlander during that hearing?
A. Yes, I did.
Q. How did he appear to you?
A. He appeared fine, normal.
Q. Were there occasions where the Judge addressed questions to Mr. Highlander?
A. Yes, sir, there was.
Q. Was he able to respond to those questions?
A. Yes, sir.
Q. Were there occasions where he was asked to execute certain documents?
A. He was asked to sign -- if he would sign the documents.
Q. And were you able to observe if he was able to do so?
A. Yes, sir.
Q. Okay.

MR. TALASNIK: Your Honor, at this point, I have a two page -- or two documents that have been stapled together that I'd like to have marked as S-6 for identification.

THE COURT: What are they, please?

MR. TALASNIK: One is entitled waiver of right of extradition hearing, and attached to it is an affidavit and arrest warrant from

Richland County, South Carolina.

THE COURT: Dated May 13th?

MR. TALASNIK: Yes, your Honor, it is.

THE COURT: Extradition waiver, May 13, S-6 for identification.

(Exhibit S-6 was marked for identification.)

MR. TALASNIK: I'll show S-6 to Mr. Davis.

BY MR. TALASNIK:

Q. Investigator Juliano, I'm going to show you two documents that have been marked together as S-6 for identification. I'd like you to look at them and tell me if you recognize what they are.

A. The top one is a waiver of right of extradition hearing it's entitled. This was the form that the Judge in the Richland County Courthouse gave Mr. Highlander and this is the form that he signed.

The second is an affidavit prepared by T. E. Darnell, who is a Sheriff's Deputy with the Richland County Sheriff's Department, that was the copy which was given to us at the time of the hearing.

Q. Now, with respect to the first page, are there signatures on there that you recognize?
A. Yes, there are two I recognize.
Q. And which names are they?
A. Richard Lee Highlander, or Richard L. Highlander, and T. E. Darnell.
Q. Was this executed by Mr. Highlander in the courtroom after the brief hearing that you've described with the state judge?
A. Yes, sir, it was.
Q. During the course of that hearing, or for that regard the federal hearing earlier, did Mr. Highlander make any requests of either judge?
A. He did not, no.
Q. Did you have contact with Mr. Highlander upon the completion of this second hearing, the one in the state court?
A. Yes, I did.
Q. In what manner did you have contact with Mr. Highlander after this second hearing was completed?
A. We escorted him to the vehicle of the Deputy U.S. Marshall, Marshall Epps. Mr. Highlander had requested from Lt. Welsh and I that he be allowed to shave and shower, clean up before

his journey back to New Jersey.
Q. When was this request made?
A. During our contact with Mr. Highlander at the Richland County --
Q. And what is it exactly he wanted to be able to do?
A. Freshen up and to clean up, change clothes, just be more presentable for his trip.
Q. During the course of that exchange, where he asked permission to be able to shower and change clothes and the like, was there any substantive questioning done of him?
A. No. We weren't asking him any questions at all.
Q. During that portion of your encounter, how did Mr. Highlander appear to you?
A. He appeared talkative, friendly, little bit arrogant.
Q. Did he manifest any physical problems to you?
A. He did not manifest any, nor did he mention any.
Q. Any medical complaints?
A. No, sir.
Q. Was there any indication by Mr. Highlander

that he was withdrawing from narcotic or alcohol overuse?

A. Not at all, sir.

Q. Did he ask you not to interview him?

A. No, sir.

Q. Did he ask to see a lawyer?

A. No, sir.

Q. So the only thing he asked for was to be able to clean himself up?

A. Yes, sir.

Q. And in response to that request, what did you do?

A. Deputy U.S. Marshall Epps was kind enough to take Mr. Highlander back to the Richland County Jail and deposit him there for his clean up, change of clothes.

Q. What time of the day, approximately, would this have been by the time Mr. Highlander was transported back to the jail per his request to be able to clean up?

A. I believe it was approximately 12 or 12:30 when that was -- all the hearings were completed.

Q. Where did you go while Mr. Highlander was being transported back to the jail?

A. We went back to the FBI office in Columbia

and received some documents -- copies of documents from Special Agent Davis.

Q. Were arrangements made, given the waiver of the right to an extradition hearing, to transport Mr. Highlander back to the State of New Jersey?

A. Yes, sir, they were.

Q. And after making those arrangements, where did you and Lt. Welsh go?

A. We returned to the Richland County Jail in Columbia.

Q. About what time did you arrive back at the Richland County Jail?

A. I believe it was approximately 1:20 p.m.

Q. Did you have occasion to see Mr. Highlander at the Richland County Jail that afternoon?

A. Yes, sir.

Q. How did he appear to you?

A. He appeared cleaned up, looked good. He was lucid and awake, alert.

Q. Did he indicate to you any complaints about his physical or medical condition?

A. No, sir, he did not.

Q. Did he make any complaints at all regarding the amount of sleep he may or may not have had?

A. No, sir. He looked well rested.

Q. Were you able to communicate with him?
A. Yes, sir.
Q. Was he able to give you answers that were roughly responsive to the questions that you asked?
A. Yes, sir.
Q. Was a decision made to interview him there in the county jail that afternoon?
A. Yes, sir, it was.
Q. What was done, if anything, about readvising Mr. Highlander of his Constitutional rights?
A. Well, at the time we interviewed him in an interview area of the jail, I advised Mr. Highlander of his rights under Miranda by using the standard form entitled "Your Rights" that is in use in the Prosecutor's Office.

MR. TALASNIK: Your Honor, I have a one page document that is entitled "Your Rights," dated May 13, 1988, that I'd like to have marked as S-7 for identification.

THE COURT: It may be so marked.

(Exhibit S-7 was marked for identification.)

MR. TALASNIK: I will show S-7 to Mr.

Davis.

BY MR. TALASNIK:

Q. Investigator Juliano, I'm going to show you a one page document that has been marked as S-7 for identification. I want you to look at it and tell me if you recognize what it is.

A. Yes, sir, I do recognize it.

Q. What do you recognize it to be?

A. This is the form from which I read Mr. Highlander his rights in the Miranda, and it is the form that he signed and I and Lt. Welsh witnessed.

Q. Investigator, does that appear to be the original of the advice of rights form that was used with respect to Mr. Highlander on Friday the 13th, 1988?

A. Yes, sir.

Q. Will you explain to the Court the procedure that you use in advising Mr. Highlander of his rights, making use of that form?

A. All right. I would tell Mr. Highlander, or anyone else, that I would like to speak to them concerning the crime of homicide, and I would tell Mr. Highlander, and I did tell Mr. Highlander before I spoke to him at all I wanted to make sure

he understood his rights. I would then read from the form.

Q. Did you read each one of those substantive listed rights out loud?

A. Yes, sir. I read the preface and then the five points.

Q. Now, while you are reading these, are you able to observe Mr. Highlander?

A. Yes, sir.

Q. What is he doing while you're reading him these rights?

A. At the end of each right, I stopped and asked him if he understood that particular one.

Q. And in each case, did you follow that procedure with Mr. Highlander?

A. Yes, sir.

Q. And in each case, what, if anything, did he do or say in response to your question?

A. He indicated that he understood each point.

Q. Now, what is that last paragraph there that doesn't have a number on it, near the bottom?

A. This is a statement that the subject understood his rights and he's read this statement and that he agrees to talk to the police.

Q. Is that statement also read aloud to Mr.

Highlander?
A. No.
Q. How is Mr. Highlander to know what's -- what that statement says, he understands his rights and he agrees to talk?
A. I gave Mr. Highlander the form and asked him to verbally read this aloud.
Q. What do you mean verbally read it aloud?
A. Asked Mr. Highlander to read it to me.
Q. So he actually read the words and you were able to hear them?
A. Yes, sir.
Q. After that was accomplished, what was the next thing that happened?
A. I asked Mr. Highlander if he would sign the form.
Q. Did you witness his signature on the form?
A. Yes, sir, I did.
Q. Do any other signatures appear on there that you recognize?
A. Yes, sir, mine and Lt. Raymond Welsh of the Margate Police Department.
Q. Is there a time and a date on the document so that we know this is the same one you're talking about?

A. Yes. Two times here, 2:15 is the time that I began reading him his rights, and 2:20 is the time that he signed -- we signed off here as well. The date of May 13th, 1988 is also in the upper right-hand corner.

Q. Okay. After Mr. Highlander read aloud the section that he was willing to answer questions and that he understood and was waiving his rights, did you begin to question Mr. Highlander about the killing of Gloria Simonelli?

A. I indicated before that that I was interested in having him give a statement and at some point giving a taped statement, and then I began asking him some questions about Gloria Simonelli.

Q. Before asking him any questions, did Mr. Highlander indicate that he didn't want to talk to you or give you a statement?

A. Not at all. He indicated he did want to tell his story and he said that, but he also said at that time he didn't want to give a taped statement at that time. I believe his words were he didn't know us well enough.

Q. To give you a taped statement?

A. That's correct.

Q. But did he indicate in any way that he was unwilling to talk to you or give you an oral statement?
A. Not at all, he was anxious to talk.
Q. Okay. Did he ask to talk to a lawyer before speaking with you in the interview room of the county jail there?
A. No, sir, he did not.
Q. Describe the procedure that you used to question Mr. Highlander that afternoon in the Richland County Jail.
A. Well, it was pretty straightforward with him. I asked him if he killed Gloria Simonelli and he said he did. I also asked him what led up to it, and he stated -- he made statements as to what led up to it. It's a combination of using open and close-ended questions if you mean technique.
Q. Who did the questioning during the course of the oral interview?
A. Predominantly it was me. Lt. Welsh was free to jump in at any time and ask any questions as to whether he preferred to do it.
Q. Did Mr. Highlander discuss with you the background of his relationship with the victim?

A. At that particular time, he mentioned that he had been upset with Gloria, boyfriend and girlfriend relationship.

Q. Did he describe for you what led up to the actual killing of Miss Simonelli?

A. Yes, sir, he did.

Q. Did he describe for you how Miss Simonelli was killed?

A. Yes, sir.

Q. Did he admit that he was --

MR. DAVIS: Your Honor, I object to the leading questions.

THE COURT: Sustained.

MR. TALASNIK: All right.

BY MR. TALASNIK:

Q. What did he say?

A. Mr. Highlander said he had been extremely upset with Gloria Simonelli, that she had filed charges against him that he believed, if convicted, he would go to State Prison. And he said that his various attempts to contact her and have her drop the charges were unsuccessful and he had planned for about a week to kill Gloria Simonelli, that he would rather kill her than go to jail.

Q. Go on.

A. He further stated that on the 25th of -- well, I should mention he said he fell back against a wall, that the only way out of going to prison was to kill Gloria. He stated that on the 25th of April, that he and a friend, about 5:30 in the afternoon, 5:30 p.m., drove around and saw Gloria's car in the parking lot in the back of the Greenhouse Restaurant, and that from there they went to another friend's house, Mr. Highlander retrieved a weapon, a firearm, from that house.

From the second house, he and the first friend drove somewhere and he took a combination of drugs and alcohol and that they returned to the Greenhouse. His intent then was to go into the Greenhouse and kill Gloria, but the friend told him to wait, and that he waited there and he saw her come outside with a male companion. He also stated he had the gun under the front passenger seat of the vehicle where he was sitting, that when he saw Gloria exit the Greenhouse Bar with this male companion, that he took the gun from under the seat, cocked it and held it at his side and walked up to where Gloria and the friend were coming out of the bar, pointed

the gun at her and shot at Gloria.

He stated that he heard her say, "oh, no, I don't believe this is happening," and that she fell. He also shot at the companion.

Q. Did he also discuss with you how he got from that location to South Carolina?

A. Yes, sir. He stated that he took a bus eventually from New York City.

Q. Was there any specific discussion about the shooting of the male companion?

A. He did state that he was sorry at one point that he shot at him because he wasn't involved, but he felt that the guy was a threat to him and that's why he shot at him.

Q. Approximately what time did you finish the oral interview that you've now summarized for us?

A. I believe it was 3:20 or so.

Q. That same afternoon?

A. Yes.

Q. What was your next function, now that you've completed this oral interview?

A. We then went to the Columbia, South Carolina airport in order to get a flight home to New Jersey.

Q. Now, you had Mr. Highlander in your custody

for the trip from the jail to the airport and thereafter in the airport?

A. Yes, sir, we did.

Q. Now, during that period of time -- and the period I'm talking about is the trip from the jail to the airport, and the stay in the airport before you got on the plane -- during that period of time, how did Mr. Highlander appear to you?

A. Very calm. I think I would typify it as resigned. He wasn't emotional or excitable. He complied with our orders at all times.

Q. During that period of time, did he manifest any physical difficulties?

A. No, sir.

Q. Did he register any complaints about his physical or medical condition?

A. No, sir.

Q. During that period of time, what did you talk about, if at all?

A. General conversation about Columbia, about Atlantic City. We ate something there at the airport, all three of us.

Q. Was food purchased for Mr. Highlander at the airport?

A. Yes, sir.

Q. Did he ever make any requests that you can recall for additional food or to be able to go to the bathroom, those kinds of things?

A. He never requested additional food. There were several times when we all went to the bathroom, Mr. Highlander used the men's room, we accompanied him. Those kinds of requests were complied with. There were no others that I can recall.

Q. Could you estimate for us how long you were at the airport before the flight was available to you?

A. Several hours. We missed two flights to New Jersey because of a problem with the county credit card, so we were there several hours. We finally got a flight somewhere around eight, eight p.m.

Q. Was there any more substantive discussion -- by substantive, I mean relating to the circumstances of the killing of Gloria Simonelli -- in the airport during this waiting period?

A. No, sir, that wasn't our purpose. There wasn't a place for an interview.

Q. What was Mr. Highlander doing at the

airport?
A. Of course he was shackled using handcuffs and a belt in front of him, jacket was placed over his handcuffs so it wasn't known to the general public. He was sitting there calm and engaging in light conversation with both Lt. Welsh and I.
Q. Tell me now about the flight from South Carolina till your ultimate destination.
A. There was one connection in Washington, D.C., I believe. That wasn't -- that was uneventful. Mr. Highlander slept a bit on the plane as I recall. We had more conversation about women, about booze and about Atlantic City and about Columbia and about Mr. Highlander's window washing business.
Q. About what time did you arrive back in New Jersey?
A. Somewhere around 10:30 or 11 p.m.
Q. During any of that flight time, did Mr. Highlander ever request that you not talk to him any more about the crime?
A. No, sir, not at all.
Q. Did he ever request to talk to or try to locate an attorney?
A. No, sir.

Q. Did he ever ask you to get one for him?
A. No, sir.
Q. After you arrived back in New Jersey, where did you and Lt. Welsh and Mr. Highlander go?
A. We were picked up from the airport by another investigator, we were driven directly to the Margate City Police headquarters.
Q. Why did you go there?
A. Because Mr. Highlander was arrested on an Atlantic County warrant. It was necessary for him to be processed, fingerprinted and photographed. That's our next stop.
Q. At the Margate Police Department?
A. That's correct.
Q. Now, what went on at the Margate Police Department with respect to Mr. Highlander when you got there?
A. We ordered food -- right after the processing, we ordered food for all of us, Mr. Highlander included, so we ate something.
Q. After eating something at the Margate Police Department, including Mr. Highlander, how did he appear to you?
A. He was -- once again, there was nothing outstanding about his appearance. He was travel

weary, as were the rest of us, but he didn't exhibit any signs of being sleepy or anything like that. He was still very conversive, anxious to talk.

Q. What do you mean by he was anxious to talk?

A. Mr. Highlander indicated that he wanted to tell his story and this is when I asked him once again if he would like to give a taped statement to us. When he said that he would, we, at this point, again advised him of his Constitutional rights.

MR. TALASNIK: Your Honor, at this point, I have a one page form entitled "Your Rights," bearing the date May 14, 1988 that I would like to have marked as S-8 for identification.

THE COURT: It may be so marked.

(Exhibit S-8 was marked for identification.)

MR. TALASNIK: I would show S-8 to Mr. Davis.

BY MR. TALASNIK:

Q. Investigator Juliano, I'm going to show you a one page document which has now been marked S-8 for identification. I'd like you to look at it

and tell me if you recognize what it is.
A. Yes, sir, I do.
Q. What do you recognize it to be?
A. This is the form from which I read Mr. Highlander his rights at the Margate Police Department on May 14th, 1988.
Q. Does that appear to be the original of the form that was used that night or early morning?
A. Yes, sir, it is.
Q. Will you describe for the Judge the procedure that you used in readvising Mr. Highlander of his constitutional rights with the use of that form?
A. Yes, sir. It was the same way we did it in Columbia, South Carolina, sir. I read through the preface to the rights of Mr. Highlander and then I read each right individually and asked Mr. Highlander if he understood each right after I read it. At the end of the statement, the paragraph underneath was read back to me by Mr. Highlander and then he signed it, Lt. Welsh signed it, as did I, and then we dated -- the time was put on it.
THE COURT: What time was it done?
THE WITNESS: 1:05 a.m., sir.

BY MR. TALASNIK:

Q. Now, you had occasion to look at Mr. Highlander as you were reading each of these rights as you've described for us?

A. Yes, sir.

Q. Did you get his assent to each one after you read it?

A. Yes, sir.

Q. You have indicated to us that he was at least travel weary as were you all. Did he manifest anything like a nodding out or closing his eyes or anything that would lead you to believe that he was just about ready to go to sleep?

A. No, sir, not at all.

Q. In relation to the reading of this form to him, when was the food gotten for Mr. Highlander?

A. Immediately when we arrived in Margate police headquarters, we ordered the food. And during the processing, one of the patrolmen went out to get it from the local convenience store. May have been 20 minutes or half an hour before we got it. Before the statement was taken, we ate.

Q. So did he eat before you read him those rights on that form?

A. Yes, sir.
Q. Okay. How did you feel after you had eaten?
A. A lot better. All we had on the plane were peanuts.
Q. After reading him this form and having Mr. Highlander read aloud this second portion, did you witness his signature on the form?
A. Yes, sir, I did.
Q. Now, I want you to think back to how he read this last portion of the form. Could you compare it with how he read it back earlier the day before when you were interviewing him in the Richland County Jail?
A. I didn't discern any difference in the way it was read back to me.
Q. Words were not slurred or anything like that?
A. Oh, no, not at all.
Q. Okay. Did you ask Mr. Highlander whether he would agree to talk with you again about the killing of Miss Simonelli?
A. Yes, sir, I did.
Q. How did he respond?
A. He said that he would.

Q. This time, did you discuss with him specifically the giving of a tape recorded statement?
A. Yes, sir.
Q. And how did he respond to that?
A. He responded in the affirmative. He -- I told him I would like to take a recorded statement from him and told him what I would like to ask in the statement. He responded he would be glad to do that.
Q. Did he indicate that he wanted to see a lawyer before he permitted himself to be tape recorded?
A. No, sir.
Q. Did you discuss with him why he was willing to give you a tape recorded statement now but he wasn't back in South Carolina?
A. That had already been resolved in my mind. They --
THE COURT: The question was whether you discussed it with him.
THE WITNESS: No, sir.
BY MR. TALASNIK:
Q. Okay. Now, did you reinterview him before setting up the tape recorder?

A. Yes, sir.
Q. And was that a lengthy reinterview process?
A. No, sir, it was not.
Q. What was the purpose of that reinterview before the taping?
A. To go over the ground we had covered earlier in the interview and to show him what to expect in the tape recorded statement because it's a little bit different.
Q. The format is different?
A. Yes, sir.
Q. And why did you take the trouble to go through that with him before actually turning on the tape recorder?
A. Well, to allow him to be more comfortable with what was going on, to know what to expect.
Q. In the process of that preparation for the taping of the statement, did you again discuss with him the killing of Miss Simonelli, the circumstances leading up to it and what followed?
A. Yes, sir.
Q. And how did that generally compare with what he had said to you in South Carolina?
A. The substance was the same. The length was a lot longer.

Q. Went into more detail?
A. Very much so, yes.
Q. Do you have a present recollection of the things that he said to you before the tape was turned on?
A. As far as responding to my questions?
Q. Yes.
A. Just that he had been upset with Gloria for filing the charges. He fell back against the wall. He felt the only way to get out of going to prison was to kill Gloria and that he had planned it for about a week. Those are the things that I recall.
Q. Okay. Now, will you describe for the Court the process that you used in taking a tape recorded statement?
A. Yes, sir. We have a form -- taped statement format form from which we read, and in that form it just gives us guidelines, case number, the date, the time, administering an oath, things like that.
MR. TALASNIK: Your Honor, I have a one page document entitled taped statement format, with a date May 14, 1988 that I'd like to have marked as S-9.

THE COURT: It may be so marked.

MR. TALASNIK: S-9 for identification.

(Exhibit S-9 was marked for identification.)

MR. TALASNIK: I would show S-9 to Mr. Davis.

BY MR. TALASNIK:

Q. Investigator Juliano, I'm going to show you a one page document that has been marked as S-9 for identification. I'd like you to look at it and tell me if you recognize what it is?

A. Yes, sir. This is the taped statement format form I completed at the time of Mr. Highlander's taped statement on May 14th, '88.

Q. And is this a form that bears your writing on it?

A. Yes, sir, it is.

Q. Does this appear to be the original?

A. It does.

Q. Was a taped statement taken from Mr. Highlander?

A. Yes, sir, it was.

Q. Will you describe for the Court the procedure that you use in terms of turning on the

tape, turning it off, how that works.
A. We use a small tape recorder, portable tape recorder that has the capability of plugging in for power. We put the tape in and push the record button, we start immediately. I go over the tape statement format form and I ask Mr. Highlander questions, or anyone else I was questioning. During that time, the tape does not -- is not stopped at all unless there's some kind of emergency or something. At that time, we will say on the tape, we're stopping the tape, or if the tape ran out on one side and you didn't have a chance to preface the running out of the tape, you would say when it came back on that the tape recorder had stopped because we ran out of tape or whatever, and the cassette had been turned over. We use the standard 30 minute cassette.
Q. Do you have -- or did you preserve the original tapes that constitute the taped statement given to you that morning by Mr. Highlander?
A. Yes, sir.
Q. Do you have them in your possession?
A. I do, sir.
Q. Could I have them, please?
MR. TALASNIK: Your Honor, I have two

cassette tapes that I'd like to have marked jointly as S-10 for identification.

THE COURT: It may be marked S-10 (a) and (b) for identification.

(Exhibits S-10 (a) and (b) were marked for identification.)

MR. TALASNIK: I'll show S-10 (a) and (b) to Mr. Davis.

BY MR. TALASNIK:

Q. Investigator Juliano, I'm going to show you these exhibits that have now been marked as S-10 (a) and S-10 (b) for identification. I'd like you to look at them and tell me if you recognize what they are.

A. Yes, sir, I do.

Q. What do you recognize them to be?

A. These are the two cassette tapes used to take the recorded statement from Richard Highlander on the 14th of May of '88.

Q. How do you know that those are the tapes that were used to take the tape recorded statement of Richard Highlander on the 14th of May?

A. This is my handwriting on both of the tapes. I also know that one of these tapes was provided by Lt. Welsh, it is not the Atlantic

County Prosecutor's tape.

Q. Why are there two tapes?

A. The length of the interview ran into two tapes.

Q. During the taping on side one of the first tape, was the tape ever turned off?

A. It was not turned off, no. It stopped at the end of the tape.

Q. And what did you do when it stopped?

A. Turned it over, put in the other side to record.

Q. Between the time that it stopped at the end of side one and the time that you turned it on again after putting it on to side two, were any other questions asked of Mr. Highlander?

A. No, sir.

Q. Were any statements made by Mr. Highlander?

A. Not that I can recall, no, sir.

Q. Were there any requests to stop the statement?

A. No, sir.

Q. Or any requests for a lawyer?

A. No, sir.

Q. What did you do then with respect to side two?

A. We recorded on side two until that had exhausted the supply of tape, and then since you, again, can only record on both sides, we started the second tape.

Q. During the running of side two -- or the taping on side two, was the tape recorder ever turned off?

A. It was not.

Q. Between the time that side two ends and you removed the tape and side three began with a new tape being put in, were any other questions asked of Mr. Highlander?

A. No, sir.

Q. Were any statements made by Mr. Highlander?

A. No, they were not.

Q. Did he ask you to stop?

A. No, sir.

Q. Did he ask for a lawyer?

A. No, sir.

Q. Now, what about on side three?

A. Side three ended the -- it's only two sides and part of side three. So at the time that we did stop the tape, it was the end of the statement and it is so mentioned on the tape.

Q. After the taping was completed, what was

done with Mr. Highlander?

A. I believe he went to the bathroom again and he was taken to the Atlantic County Justice Facility where he was incarcerated.

Q. How did Mr. Highlander appear during the course of the taking of this tape recorded statement?

A. As far as demeanor, sir?

Q. Yes.

A. Emotionally he was up and down during this statement. He started out calm. At one point he became excited when he was relating the account.

Q. Okay. Did he ever ask you to turn the tape off?

A. No, sir.

Q. Was the tape ever stopped for any reason?

A. No, sir, aside from when it ran out.

Q. Now, would it be ordinary or customary in the taking of a taped statement for you to advise the defendant of his rights on the tape?

A. Oh, yes, sir.

Q. And was that done, again, in this case?

A. Yes, sir, it was.

Q. So that if we put on side one, we would hear that?

A. Yes, sir.
Q. At my request, did you bring with you a portable tape recorder that is capable of playing those tapes?
A. Yes, sir, I did.
MR. TALASNIK: Your Honor, at this point, I would ask leave to simply play that portion of the tape -- the tapes having already been heard by Mr. Davis.
THE COURT: No, let me -- I want to hear some of the tape, but that's not what I want to hear. Let me first indicate, just refresh my recollection, we had at some point -- I think it was on the record sometime ago -- earlier discussed that the tapes had been made available and that there was no issue to be presented to me with respect to the audibility or the clarity of the tapes.
MR. DAVIS: That's correct, Judge.
THE COURT: That is correct. So that if, in fact, they're substantively admissible, the tape itself may be admissible.
MR. DAVIS: Yes.
THE COURT: Okay. You have, as I understand it, also had a transcript prepared?

MR. TALASNIK: Yes, your Honor.

THE COURT: Okay. I can, as far as I'm concerned, in terms of the content of the tape, look at the transcript. That's going to be a lot quicker and easier for me to do. However, there's a portion of the tape that I want to hear and I know what I want to hear.

MR. TALASNIK: All right. I have -- well, I'll have the officer identify the transcript and then give it to your Honor.

BY MR. TALASNIK:

Q. Was a transcript prepared based upon the taped statement that was secured that morning from Mr. Highlander?

A. Yes, sir, it was.

Q. And how was the transcript prepared?

A. The secretary of the Major Crimes Squad -- one of the secretarys in the Major Crimes Squad puts it in a machine and types it on a word processor at the same time.

Q. Was a transcript actually prepared in this matter using that format?

A. Yes, sir, I believe it was.

Q. Have you had occasion to review the transcript to check its accuracy?

A. I did.
Q. And based upon that review, did you determine that it was essentially accurate in putting into printed words that which appears on the paper tape?
A. Yes, sir.
Q. I'm now going to show you a multi-page document, which is unnumbered, but which bears at the top the words statement.
MR. TALASNIK: First I want to have it marked as S-11 for identification.
THE COURT: It may be so marked.
(Exhibit S-11 was marked for identification.)
BY MR. TALASNIK:
Q. Investigator, I'm going to show you a collection of pages that have been marked collectively as S-11 for identification. I want you to look at it and tell me if you recognize what it is.
A. This is a transcript of the statement that Lt. Welsh and I had procured from Mr. Highlander on the 14th of May of 1988.
Q. Does it appear to be the one that you had earlier reviewed for accuracy?

A. Yes, sir, this is the original statement.
Q. This is the original?
A. Yes, sir.
MR. TALASNIK: I would show the original of L-7, therefore, to Mr. Davis.
MR. DAVIS: I've seen it.
MR. TALASNIK: For the Court, S-11.
THE COURT: Well, you may leave it there. I'm not going to look at it yet.
MR. TALASNIK: Okay.
BY MR. TALASNIK:
Q. Now, there is a portion on the tape, as is reflected in the transcript, towards the end where it appears that Mr. Highlander had some kind of a problem or an episode, is that correct?
A. You could say that, yes, sir.
Q. Will you describe for us, as best you can now recall, what that was all about, what you did about it?
A. At one point in the interview, Mr. Highlander was sobbing, and as he was sobbing, he was, I guess I described it as hyperventilating, which is breathing fast -- my definition, I guess -- and I just let him go through it and calmed him down during it and it was over in about

30 to 60 seconds.

Q. Why didn't you stop the tape?

A. There was no reason to stop the tape. Mr. Highlander was not in any visible difficulty where he had stopped breathing or complained of anything. He was just sobbing, and sometimes when people sob, they get emotional and they hyperventilate.

Q. In the context of the overall tape, was that near the beginning, middle or the end?

A. I believe it's near the end, sir.

Q. Do you remember the subject matter that was being discussed at the time of this sobbing?

A. I don't recall specifically.

Q. But you do recall that it was near the end of the questioning process?

A. Yes, sir.

MR. TALASNIK: I have no further questions of the witness. Thank you, your Honor.

THE COURT: Do you have the machine?

MR. TALASNIK: Yes.

THE COURT: All right. Take S-10 (b). That's the second cassette?

THE WITNESS: Yes, sir.

THE COURT: Put it in the machine.

While you're doing that, let me ask: You indicated this is a 30 minute cassette?

THE WITNESS: I'm sorry, this one is a 90.

THE COURT: There were two sides -- so that what I'm about to hear would have been almost exactly an hour into the statement.

THE WITNESS: After an hour.

THE COURT: Starting at the point of one hour and going?

THE WITNESS: Yes, sir.

THE COURT: How long after -- how long after an hour -- how long is the whole statement?

THE WITNESS: I don't have a time on the whole statement. I have a begin and end time.

THE COURT: You started -- what are the begin and end times?

THE WITNESS: 1:05, I believe, was the begin time. Let me check my notes.

MR. TALASNIK: Your Honor, if I could, S-9 for identification was identified by the officer.

THE COURT: You may show him that.

MR. TALASNIK: The taped statement

format.

THE WITNESS: I'm sorry, 2:23 a.m. was the begin time, 3:54 a.m. was the end time of the statement.

THE COURT: The statement --

THE WITNESS: Began --

THE COURT: At what?

THE WITNESS: At 2:23 a.m.

THE COURT: And ended?

THE WITNESS: 3:54 a.m.

THE COURT: So, what I'll hear if I start at the second tape, is about 3:20 a.m., or 3:25?

THE WITNESS: It should be, yes, sir.

THE COURT: Okay. Let me hear a little of that.

(Tape began 11:39 a.m. and concludes 11:42 a.m.)

THE COURT: The record will reflect that I've listened for about five minutes. Now advance the tape until I tell you to stop. Stop the tape. Play it again.

(Tape began 11:43 a.m and concludes 11:47 a.m.)

THE COURT: The record will reflect

that I've listened to about another five minutes, somewhere toward the end -- I don't have the transcript -- but in the second segment. He was discussing the only time -- or one of the times the actual homicide itself on the parking lot of the Greenhouse and the drive to New York. And the first part of the segment -- frankly, I don't remember what he was talking about. I wasn't listening to it for content. I don't know that it's necessary to reflect on the record what the contents of the first five minute segment was. That's not the purpose for which I was listening to it.

Mr. Davis, you may cross-examine.

MR. DAVIS: Okay.

CROSS-EXAMINATION BY MR. DAVIS:

Q. Investigator, you've indicated you initially saw Mr. Highlander in South Carolina?

A. That's correct.

Q. And at the time that you saw him, he was in the custody of the FBI?

A. That's right.

Q. Was that around nine o'clock? Eight nine o'clock in the morning?

A. No, sir.

Q. You say it was ten o'clock?
A. It was after ten o'clock.
Q. After ten a.m. Do you have anything to reflect that or is that just your recollection of it?
A. My report.
Q. Do you have a report?
A. That's correct, sir.
Q. Now, you don't know what time Mr. Highlander was gotten up by the FBI, do you?
A. No, sir.
Q. Now, when you initially saw him -- and you've indicated to Mr. Talasnik that he was looking well -- he was actually sitting in a car?
A. You're asking me, sir, or telling me?
Q. Yes.
A. He was not, sir.
Q. Where was he?
A. He was going from the jail to the car, sir.
Q. Did you have any personal knowledge -- did you personally know Mr. Highlander prior to this date?
A. No, sir.
Q. So you had -- as far as you know, you've never actually seen Mr. Highlander up until May

13th?
A. Just photographs.
Q. Just photographs. So when you say he looked well, what were you comparing him to?
A. Someone who looks sick.
Q. Not Mr. Highlander as such?
A. No, sir.
Q. Isn't it a fact that Mr. Highlander had a limp at that time?
A. I didn't notice that.
Q. You didn't notice that limp?
A. Not at all, sir.
Q. Well, let me ask you this question: The very next day, at sometime you brought him back to the county jail, the Atlantic County Jail?
A. That's correct.
Q. And that was approximately what time?
A. It was after the interview, after 4:00 a.m.
Q. So it was after 4:00 a.m. And when you brought him to the county jail, you had a problem getting him admitted to the county jail, didn't you?
A. Not at all, sir.
Q. Didn't you have a conversation with Sheriff's Officer Virgillio about his physical

condition and Virgillio initially refused to allow you to admit this man into the county jail -- let me finish the question -- prior to taking him to the Medical Center?

A. I don't recall taking him to the medical center.

Q. You say you took him. Is it not a fact that you had a conversation with officer -- Sheriff's Officer Virgillio concerning the admitting Mr. Highlander to the county jail because Virgillio wanted you to initially take him to the Atlantic City Medical Center to have him examined?

A. I don't recall having that conversation.

Q. You don't recall having any conversation about his --

A. Physical condition?

Q. Physical condition and the jail not actually wanting him initially?

A. Not at all.

Q. You don't recall?

A. No, sir.

Q. Now, back in -- directing your attention, again, in South Carolina, you've indicated that once you saw him, you then went to the Court?

A. That is correct, sir.
Q. And that was the federal court?
A. Yes, sir.
Q. And you indicated to Mr. Talasnik at that time that Mr. Highlander had a companion with him in Court?
A. Someone sitting next to him, sir.
Q. You told us who it was?
A. Yes, sir.
Q. Who was it?
A. I was told later it was a Public Defender.
Q. When were you told it was a Public Defender?
A. At some other time. It wasn't at that time.
Q. When?
A. Probably after I was, I assume.
Q. Pardon me?
A. Probably after the hearing.
Q. After the extradition hearing you were told he had a Public Defender?
A. Yes, sir.
Q. And you recognized her as a Public Defender?
A. I didn't recognize her as anyone, sir.

Q. At some point, you recognized her as being a Public Defender for Richard Highlander?
A. I see what you're saying. Yes, sir.
Q. Is that true?
A. Sure.
Q. If, in fact, you knew he had a Public Defender and you went to this interrogation room to take a statement, knowing that, why did you not speak to the attorney?
A. My understanding was she was there for the purpose of the extradition only.
Q. That was your understanding?
A. That's correct, sir.
Q. But knowing that he had an attorney, why did you not speak to the attorney prior to taking the statement or attempting to take the statement from Mr. Highlander?
A. I did not believe it was necessary, sir.
Q. You didn't believe it was necessary to speak to the attorney, knowing that he was represented by a Public Defender?
A. In the extradition, yes, sir, he was represented on these charges.
Q. Well, you didn't ask the attorney what she represented him for, did you?

A. No, sir.
Q. Now, in fact, Mr. Highlander made certain requests to the Richland County Judge when he was taken from the Richland County Jail, didn't he?
A. In what regards, sir? I don't understand.
Q. He made requests to the Judge to shower and put on clean clothes?
A. He may have, yes, sir.
Q. So when you told Mr. Talasnik that no requests were made, requests were made in open court. In fact, officer, if you recall, he made these requests conditioned upon him submitting voluntarily to extradition proceedings, didn't he?
A. Not to my knowledge.
Q. You were in the courtroom?
A. That's correct, sir.
Q. In fact, officer, at that point, the FBI had to intercede to get him taken back to the Richland County Jail because, at that point, when he waived extradition, he was no longer a prisoner of the Richland County Jail, is that not true?
A. The FBI wasn't present at the Richland County Courthouse.
Q. After he waived extradition in the county court, where was he taken?

A. He was taken back to Richland County Jail.
Q. Do you know who made those arrangements?
A. We made the arrangement with Deputy U.S. Marshall Epps.
Q. Instead of FBI, the Marshalls had to make the arrangements to take him back because, at that point, he was no longer a prisoner the Richland County Jail, was he?
A. That's correct, sir.
Q. And these arrangements were made while he was speaking to the Judge and subsequent thereto in speaking to the U.S. Marshalls?
A. That was made by us. That's all I can tell you.
Q. They were made by us, us being who?
A. Lt. Welsh and myself.
Q. In fact, you didn't have any jurisdiction to make any arrangements at the Richland County Jail, you asked the federal people to do it for you, didn't you?
A. We asked him to take him back. We made arrangements with the Richland County Jail through Deputy Darnell.
Q. Now, at that point -- when did you attempt to take this initial taped statement, after he had

showered and all?
A. Yes, after he was cleaned up.
Q. And about what time was this?
A. I'd have to check my notes to be exact. I believe it was 2:10 p.m.
Q. Now, from the time that you arrived, you say it was around ten until 2:10 p.m., was -- is it fair to say that Mr. Highlander was in custody?
A. Somewhere, yes.
Q. Somewhere he was in custody. And when you took him to this interrogation room, he was in custody, in your custody at that point?
A. He was in the custody of the Richland County Jail.
Q. And did you have him in handcuffs and leg irons?
A. No, sir. He was in jail.
Q. He was in jail, okay. Now, at that point, you attempted to take the taped statement?
A. I asked him if he would be willing to give us a statement and he responded affirmative that he would.
Q. The question is: Is it not a fact that you attempted to take a taped statement?
A. I just asked him about it, yes.

Q. Did you attempt to take a taped statement?
A. No, I didn't attempt to take it. I didn't turn the tape recorder on. I asked him if he would.
Q. You may not have turned the recorder on, but you made the request?
A. That is correct, sir.
Q. Is that not an attempt?
A. I wasn't sure what you meant, sir. I'm sorry.
Q. You made the request?
A. Yes, sir.
Q. Okay. And what happened?
A. He said he did not want to give a taped statement at that time.
Q. In fact, officer, he didn't give any statement at that time, did he?
A. He did give a statement.
Q. Now, once you left the Richland County Jail, you then proceeded to the airport?
A. That's correct.
Q. And how long would you say it was from the time that you left South Carolina to the time that you arrived in Atlantic County area?
A. About four hours all total.

Q. What time did you leave?
A. Somewhere around eight p.m., I believe.
Q. What did you do between three and eight?
A. We waited for a plane, waited for the card to clear to get on the plane. We missed several.
Q. Where was Mr. Highlander from the time that you took this -- allegedly took this statement around three o'clock until you caught the plane? Was he in your custody the entire time?
A. He was in our custody.
Q. I'm sorry. I didn't mean to cut you off.
A. If one of us went to the bathroom, someone was always with him.
Q. So where were you waiting?
A. For the plane?
Q. Yes.
A. In the terminal.
Q. And how long did you remain in that terminal, how long did it take?
A. Couple of hours to get our connection.
Q. Okay. And he was in handcuffs, I assume?
A. Yes.
Q. Did he have leg irons or just handcuffs?
A. Handcuffs and a belt around the front.
Q. And from five o'clock until one clock, he

was constantly or continuously in your custody and he was in handcuffs, is that true?

A. Not the whole time, no, sir.

Q. Well, where was he?

A. Well, when he was in the jail -- he was not --

THE COURT: Not what --

THE WITNESS: -- handcuffed in the jail. When we had him at the airport he was handcuffed.

BY MR. TALASNIK:

Q. What time did you leave the jail?

A. I'm not exactly sure. It was after the statement.

Q. About what time? You said you started the statement at around three o'clock.

A. May I check my notes?

Q. Sure.

A. At 2:10 p.m. We began the statement at the jail, at 3:30 we left the jail, sir.

Q. So, it's safe to say from 3:30 until the time you arrived in Atlantic County, Mr. Highlander was in your presence continuously in handcuffs?

A. That's correct, sir.

Q. All right. And you said you arrived in Atlantic County at about what time?
A. May I check my notes again, sir? It was 12:15, I believe, a.m.
Q. You arrived where?
A. At Margate City Police headquarters. 12:15 a.m., sir.
Q. All right. Now, why did you not lodge the defendant in the county jail that night?
A. The defendant had to be processed in the Margate City Police station.
Q. It had to be done that night?
A. That's our procedure before he's incarcerated.
Q. Don't they have processing facilities in the county jail?
A. Not Margate Police processing. He had arrest reports from Margate Police, reports, they need their fingerprint cards and they need their photographs.
Q. Did Mr. Highlander ever indicate to you on your way back from South Carolina, or at least after you left the area of Philadelphia, that he wanted to be lodged in the county jail?
A. No, sir, he never indicated one way or the

other whether he did or didn't.
Q. You didn't go directly to Margate, did you?
A. That's exactly where we went.
Q. You made some stops, you went to Bader Field to pick up a car?
A. You are correct, sir, that's correct.
Q. You went somewhere else to pick up -- you went to the Prosecutor's Office to pick up your bail piece?
A. That's very possible, sir.
Q. And eventually you got to Margate?
A. We did go to Margate, yes, sir.
Q. And when you arrived in Margate, or on your way to Margate, isn't it a fact that Mr. Highlander was indicating to you his concern -- or fear, I should say -- about Lt. Backi and certain police officers in the Margate Police Department?
A. No, sir, he did not indicate any fear.
Q. In fact, isn't it a fact that he was so much concerned that Lt. Welsh, I think it's safe to say at that time, he was upset about being tired and delays that you encompassed flying from South Carolina back to Philadelphia, did he indicate if anybody would bother the defendant, he, himself, would personally kick them in the

ass?
A. I don't recall that at all.
Q. In fact, you were rather upset and aggravated at Lt. Welsh because when you arrived -- when you arrived in Philadelphia, there was no one there from the Atlantic County Prosecutor's Office to pick you up, was there?
A. We waited for awhile.
Q. In fact, the while that you're talking about is approximately three hours?
A. That's not true, sir.
Q. Now, while you were on this plane flying back from South Carolina, you engaged in conversation with Mr. Highlander concerning his case, didn't you?
A. No, sir, not the case.
Q. Do you recall talking about Jennifer Zeitz (ph), how she almost made you cry when you interviewed her?
A. How she almost made me cry, sir?
Q. Yes.
A. I never said that to him on the plane at all. I don't remember having that conversation with Mr. Highlander at all.
Q. You talked to him about Jennifer Zeitz,

didn't you?
A. Not at that time.
Q. You talked to him on the plane about Rufus Duff?
A. I did not, sir.
Q. And you talked to him about being in South Carolina, how long he had been there, how he had gotten there?
A. I talked to him about how he got there, I talked to him about South Carolina.
Q. Now, when you arrived at the Margate Police Department, is it not a fact, Officer Juliano that the defendant indicated to you that he really did not desire to give a statement at that time?
A. That's not true, sir.
Q. Now, what time did you arrive at the police department?
A. I believe I stated it was 12:15 a.m., sir.
Q. When did you commence your statement, your taped statement?
A. I believe that was at 12:45, I believe. 12:45 is -- 12:45 is when Mr. Highlander ate and 1:05 is the commencement of the statement, sir.
THE COURT: Wait a minute. When I asked you the same question, you told me it was at

2:23.

THE WITNESS: I'm confused. May I see that?

MR. TALASNIK: Your Honor --

THE COURT: Let him see whatever he needs to see.

MR. TALASNIK: I'd like to have --

THE COURT: Let him see whatever he needs to see.

MR. TALASNIK: That's what I wanted to do, but I have to have it marked for identification.

THE COURT: You don't have to do anything. Let him see whatever he needs to see.

MR. TALASNIK: Okay.

THE COURT: Mr. Talasnik, don't say anything. This is cross-examination.

MR. TALASNIK: There's one other document I want to be able to show him.

THE COURT: Show him whatever he wants.

MR. TALASNIK: Okay.

THE COURT: You may proceed.

BY MR. DAVIS:

Q. Now, officer, when did you commence --

first of all, what time did you arrive at the police department?

A. 12:15 a.m., sir.

Q. What time did you start talking to the defendant about this statement?

A. At 1:05 a.m.

Q. And when did you commence your taped statement?

A. 2:23 was the time, sir.

Q. Now, between 1:05 and 2:23, which is approximately an hour and 15 minutes, what did you talk to the defendant about?

A. At that time, about the case, about his prior statement.

Q. Now, on direct examination from Mr. Talasnik, you had indicated that you spoke to him very briefly before going into his taped statement?

A. I don't know if I used the word briefly. I may have. It's common to do a pre-interview before a taped statement.

Q. And it takes you an hour and 15 minutes to do a pre-interview based on the fact that you've just told the Judge and the people in this courtroom that in South Carolina you took an oral

statement?
A. I took an oral statement.
Q. So you had the facts in South Carolina?
A. I had a story in South Carolina.
Q. And you still needed another hour and 15 minutes of questioning the defendant to get this taped statement?
A. That's correct.
Q. In fact, wasn't it -- didn't it take you an hour and 15 minutes to convince the defendant to give a statement?
A. No, sir, not at all.
Q. And it was during this hour and 15 minutes, average, that the defendant was indicating to you and Lt. Welsh and whoever else was contained in that room, that he did not want to give a statement?
A. No, sir, he never indicated that.
Q. And it was due to -- didn't he also indicate to you that he was in pain with his leg?
A. He did not.
Q. Did he also indicate to you that he was having withdrawals from cocaine or some type of drug?
A. He did not, sir.

Q. Okay. It was during this period of being with you for some 15 to 16 straight hours that eventually he gave in and gave the statement?
A. He didn't give in, he just -- he wanted to tell a story, sir.
Q. And he wanted to tell you this story after you pursuaded him after this hour and 15 minute period to give a story?
A. I asked him right up front if he wanted to give a taped statement and he said yes.

MR. DAVIS: That's all, Judge.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Thank you.

REDIRECT EXAMINATION BY MR. TALASNIK:
Q. Now, officer, let me show you what has been marked as S-7 for identification. I believe you've indicated that that is -- well, tell us again what that document is.
A. This is the Richland County Jail rights form, or our rights form that I read to Mr. Highlander in Richland County Jail.
Q. What is the date on that?
A. May 13, 1988.
Q. And was -- when was that document prepared?
A. It was prepared at the time I read it.

Q. And what does that document provide in terms of what went on in the county jail?
A. Any interview or any talking of the case to Mr. Highlander.
Q. Okay. Now, what followed that document's preparation is the oral interview that you have discussed with us here?
A. Yes, sir.
Q. And it is that oral interview that you've told Mr. Davis terminated about 3:30 in the afternoon?
A. I believe so, yes.
Q. So, it is only from 3:30 that afternoon until about 12 hours later that you have him in your custody and primarily in cuffs?
A. That's correct.
Q. Okay. Now, I want to go through the sequence of events on your arrival at the Margate Police Department, okay?
A. Yes, sir.
Q. Now, what time, approximately, did you arrive at the Margate Police Department?
A. Approximately 12:15 a.m. on the 14th.
Q. What was the first thing that happened upon your arrival at the Margate Police Department?

A. We ordered food.

THE COURT: Mr. Talasnik, he has answered most of these questions.

MR. TALASNIK: Well, your Honor, I believe that some confusion has been engendered by the cross-examination of Mr. Davis. I want to --

THE COURT: I'm not confused. If you want to supplement the answers that he has already given with new answers to different questions, you may, but I don't want to hear the same testimony again. My ears are very good.

BY MR. TALASNIK:

Q. As best you can recall, what -- how long did it take between the time that you arrived at 12:15 and when the food arrived?

A. 20 minutes to a half an hour I would say.

Q. What was going on during that 20 minutes to a half an hour?

A. Mr. Highlander was being processed.

Q. What happened when the food arrived?

A. We ate.

Q. Including Mr. Highlander?

A. Including Mr. Highlander.

Q. And about how long did that take?

A. Maybe 15 minutes or so.

Q. Does that get you to the 1:05 when the rights were read to him anew?
A. Approximately, yes.
Q. Okay.
MR. TALASNIK: That's all I have, your Honor.
THE COURT: Mr. Davis?
MR. DAVIS: I have no further questions, Judge.
THE COURT: Did you take any notes in the jail about your discussion with the defendant at that time?
THE WITNESS: Yes, sir, I did.
THE COURT: Do you have those notes?
THE WITNESS: I do not.
THE COURT: Where are they?
THE WITNESS: They're destroyed when we -- when the original typed up reports are typed up.
THE COURT: Mr. Talasnik, do you have anything further?
MR. TALASNIK: Not based on that question, your Honor, although I would perhaps have marked for identification the report that was made based upon those notes. And maybe I'll ask a

few questions based on that.

I have a two page document that I'd ask to have marked as S-12 for identification.

THE COURT: Dated what?

MR. TALASNIK: I'm sorry. Okay. Dated May 13th, 1988.

THE COURT: S-12.

(Exhibit S-12 was marked for identification.)

MR. TALASNIK: I would show S-12 to Mr. Davis.

REDIRECT EXAMINATION BY MR. TALASNIK:

Q. Officer, I'm going to show you what's now been marked as S-12 for identification. I'd like you to look at it and tell me if you recognize what it is.

A. It's the original report that I prepared concerning our contact with Mr. Highlander in the Richland County Jail.

Q. What's the purpose of creating that report?

A. So that there will be something set to memorialize what happened.

Q. Who prepared that report?

A. I prepared the report, and I believe I typed this one as well.

Q. And what information did you use in the preparation of that report?
A. The notes I had taken at the time.
Q. When did you prepare that report?
A. This was done on the -- probably the following Monday, following that week.
Q. Was it prepared at a time that your memory of the events was clear?
A. Yes, sir.
Q. Did you refer to your notes in the preparation of that report?
A. Very much so, yes.
Q. Was there anything in your notes that you didn't include in the report?
A. No, sir.
Q. Does your signature appear on the report?
A. It does, yes.
Q. And does that report contain the details of the oral interview given to you by Mr. Highlander in the county jail in Richland, South Carolina on the 13th?
A. Yes, sir, it does.

MR. TALASNIK: I have no further questions, your Honor.

THE COURT: Mr. Davis?

RECROSS-EXAMINATION BY MR. DAVIS:

Q. Officer, directing your attention to the report. Is this report you've indicated to the Prosecutor you took from your notes?

A. I'm sorry?

Q. You've indicated --

THE COURT: He hasn't -- ask the question.

BY MR. DAVIS:

Q. You've indicated to the Prosecutor that basically you took or obtained the report or created the report from your notes, is that a fact?

A. Yes.

Q. Now, do you have any recollection of when you actually wrote this report which has been marked?

A. I can tell you exactly when I wrote it. I know when it was due.

Q. Pardon me?

A. I know it was due right away.

Q. It may have been due right away but do you know when you actually wrote the report?

A. I can't give you a date, no, sir.

Q. Is it a fair summation to say what's

contained in this report -- or the conclusions contained in this report are conclusions that you drew from Mr. Highlander's statements?

A. No, sir.

Q. You did not take this report and say, Mr. Highlander, review this report and see if this coincides with your recollection of what you said?

A. No, sir, I did not.

Q. So, everything contained in that report are the conclusions, statements that you drew from what he said to you?

A. They're what he said to me.

Q. Pardon me?

A. They're what he said to me.

Q. They're not verbatim?

A. No, they're not in quotes, sir.

Q. I know you don't have your notes. Did you take them down in a verbatim manner?

A. I took them down. Sometimes when they were quotes, I would take a quote down.

Q. Did you say, Mr. Highlander, slow down so I can get this exactly?

A. No, sir. I wasn't quoting everything he said.

Q. Did you stop him?

A. I could have.
Q. Did you stop him?
A. I don't remember if I stopped him.
Q. So what -- tell us how you took your notes?
A. Just talk. I may stop him to ask a question, just take notes of what he's saying. Ask questions about time, things like that.
Q. Now, this report, the way it's written, probably more detail than your notes, aren't they?
A. I don't think so, sir.
Q. Just in terms of verbiage, there's much more in this than your notes, is that not a fact?
A. In that regard it may be.
Q. Pardon me?
A. In that regard there may be, but not in fact.
Q. So you had to add certain verbiage in order to write this report, and that verbiage was based solely upon your recollection?
A. No, sir, it was based on my notes.
Q. Recollection in compliance with your notes or in addition to your notes?
A. It was based on my notes.
Q. Okay. If you used certain verbiage that was not contained in your notes, where did you

obtain that verbiage from?

A. Like he stated that, he said --

THE COURT: The witness has pointed to his head.

MR. DAVIS: Your Honor, he pointed to his head, I assume he took it from his recollection.

THE COURT: Is that what you meant?

THE WITNESS: No, sir.

BY MR. DAVIS:

Q. What did you mean?

A. The only thing that is added to this report is he stated that -- the notes told me what he said, and I put that down, went to Greenhouse Bar, whatever he said.

MR. DAVIS: That's all I have.

THE COURT: Mr. Talasnik?

REDIRECT EXAMINATION BY MR. TALASNIK:

Q. Let me select portions of the statement so that we can make clear which words are yours and which words are Mr. Highlander's, okay? Let's take, for example, under the heading 2:10 p.m., Richard Highlander stated that prior to Gloria Simonelli's death he had been extremely upset that she had filed charges against him that would

violate his parole. Now, which words were Mr. Highlander's and which ones were yours?

A. Well, Richard Highlander stated that prior to Gloria Simonelli's death -- Mr. Highlander may have said prior to Gloria's death, I was extremely upset or I was very upset.

Q. The next sentence: He stated that he was certain that once the charges were indictable, he would be going to prison.

A. You could just about change the he's to I's, he stated, and then these would be his words.

Q. He stated that he knew that she frequented the Greenhouse Restaurant and planned for about a week to kill her in the bar.

A. The word frequented may have been mine, that she went there often would be maybe his way of saying it.

Q. What about the notation that it was the Greenhouse and that he intended to kill her for about a week?

A. That's what he told me. That's what I put down.

Q. And would that be the same for the rest of the information contained in the report?

A. Yes, sir, that's correct.

Q. Now, on page two of the report, you do have some information in quotes. The sentence begins: He further stated that when he was about ten feet away from the two, he pointed the gun at Gloria and pulled the trigger, Gloria fell and said "oh, no, I don't believe this is happening." Now, why are those words in quotes?

A. That's what he told me Gloria said exactly.

Q. Now, if I removed the words "he further stated," would the rest of that be all from him?

A. Yes, sir.

Q. Okay.

MR. TALASNIK: I have no further questions. Thank you, your Honor.

THE COURT: Mr. Davis?

MR. DAVIS: I have no questions, Judge.

THE COURT: You may step down. Thank you very much.

(Whereupon the witness was excused.)

THE COURT: Mr. Talasnik, what else do you have in this proffer?

MR. TALASNIK: With respect to these matters, your Honor, only the items that were marked for identification.

THE COURT: Which ones?

MR. TALASNIK: S-6, S-7, S-8, S-9, S-10, the tapes, S-12 and S-11.

THE COURT: Well, I'm going to -- Mr. Davis, do you desire to be heard on any of that?

MR. DAVIS: No, Judge.

THE COURT: I'm going to receive S-6 for this purpose. It's not going to be marked separately. S-7, S-8, S-9, S-10 I'm not going to receive, other than to the extent that I've already played it, because I'm satisfied that for the contents I can receive S-11, and S-11 won't tell me anything that S-10 doesn't, except for which I've already heard, in my view, in parts of S-10. S-12, I'm not clear on how this comes in in this procedure, Mr. Talasnik. Well, I guess it's maybe a Rule 20.

MR. TALASNIK: It's purely for Rule 20. Mr. Davis having asked the officer --

THE COURT: Prior consistent statements shall not be admitted to support the credibility of a witness except to rebut and expressly implied charge -- all right, I'll receive it under Rule 20. All right. I haven't read S-11 yet. I'll do that before I make any

rulings. I'm not going to do it right now.

What else do you have, Mr. Talasnik?

MR. TALASNIK: Your Honor, the last statement --

THE COURT: I mean on this proffer.

MR. TALASNIK: On this? Nothing, your Honor.

THE COURT: All right. I thought our procedure was we were going to limit -- or complete the proffer with respect to each of the evidence. This is your -- then you rest on the proffers of numbers three and four?

MR. TALASNIK: Yes, your Honor. With the indication that actually four consists of an (a) and a (b). There was an oral interview that preceded the taping, so that there are actually three statements, two oral and one taped, as opposed to the indication in the letters of two. With respect to notice --

THE COURT: I understand. Okay. Mr. Davis, are you going to have any testimony to present in connection with proffers three and four?

MR. DAVIS: Yes, Judge.

THE COURT: Okay. What's your

proffer?

MR. DAVIS: Judge, the witness I have is Avis Carter, who is a nurse down at the county jail.

THE COURT: Okay.

MR. DAVIS: Judge, I didn't mean to cut you off, Judge. We also have here, Judge, the medical records from the county jail, which Mr. Talasnik has indicated that he would concur in submitting for the purposes of this hearing.

THE COURT: Is that right, Mr. Talasnik?

MR. TALASNIK: Your Honor, what I concurred in is that it was not necessary for a records custodian to identify them. I had never seen them before. He simply doesn't need a custodian to authenticate them.

THE COURT: Let's mark them as Exhibit D-4. Mr. Talasnik, you may examine them over lunch and you'll let me know what, if any, problems you have with respect to that.

Mr. Davis, is Miss Carter here after lunch available?

MR. DAVIS: Well, I prefer to take her before. We had her yesterday.

THE COURT: I understand, but I have a meeting --

MR. DAVIS: Well, she'll have to be, Judge.

THE COURT: -- with your office and all kinds of other people in about six minutes.

MR. DAVIS: I'll just tell her.

THE COURT: Put her right on after lunch. Do you have any other witnesses that you want to offer?

MR. DAVIS: That would be it.

THE COURT: Mr. Talasnik, how many witnesses on the last proffer?

MR. TALASNIK: One.

THE COURT: You're going to have anything that you know of?

MR. DAVIS: None.

THE COURT: So we have two more witnesses today, as far as we know, plus the records, plus this statement, and then I'll have to consider --

MR. DAVIS: Right.

THE COURT: Okay. That's fine. Mr. Talasnik, you may have back all of the exhibits you proffered, except S-11 which I'll hold on to

for a little while.

We'll be in recess until after lunch.

(Lunch recess.)

THE COURT: Okay. Are we all set?

MR. DAVIS: I'm ready, Judge.

THE COURT: The State has rested with respect to the proffer on the May 13th and May 14th statements. Mr. Davis?

MR. DAVIS: Avis Carter, your Honor.

AVIS CARTER, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DAVIS:

Q. Now, Miss Carter, by whom are you employed?

A. I work at the Atlantic County Justice Facility for correctional medical assistance.

Q. Okay. And what position, if any, do you hold there?

A. Licensed practical nurse.

Q. And how long had you been so employed?

A. For a year and a month.

Q. Now, were you employed in that position on May the 15th of 1988?

A. Yes.

Q. You have to keep your voice up.

A. Yes.
Q. Are you familiar with Richard Lee Highlander?
A. Yes.
Q. Do you see him in the courtroom?
A. Yes.
Q. Would you point him out to the Court?
THE COURT: The witness points to the defendant.
BY MR. DAVIS:
Q. All right. And how are you familiar with Mr. Highlander?
A. I was the first nurse to see him when he was admitted into the facility.
Q. Okay. And when did you initially see him when he was admitted, do you recall the date?
A. I believe it was the 13th of May, 1988.
Q. And how did you happen to see him?
A. The admission office called our medical department and asked me to come over because Richard was complaining of pain in his left ankle.
Q. And what time of day did you see him?
A. It was early in the afternoon.
Q. Approximately what time, if you know?
THE COURT: Excuse me. What day are

we talking about?

THE WITNESS: May 13th, 1988.

MR. DAVIS: I'll direct her attention to D-4, please.

THE COURT: You may.

BY MR. DAVIS:

Q. Miss Carter, directing your attention to D-4, does that refresh your recollection in any fashion?

A. Yes. The 14th.

Q. Pardon me?

A. It's the 14th of May.

Q. Where did you see him?

A. I saw him in the admission part of the jail.

Q. Okay. That was approximately what time?

A. It was between 12:30 and one in the afternoon, I believe.

Q. Okay. Now, how did he appear to you?

A. He was pale and he told me that he was experiencing pain in his left ankle because he had just had a pin placed in his ankle in March. He had removed the cast while he was on the run and it was giving him pain. He also told me that he was in drug withdrawals.

Q. Now, did you look at the ankle?
A. Yes.
Q. Okay. And how did the ankle appear to you?
A. It was very swollen, painful to touch.
Q. Do you have any training with regard to drug withdrawals?
A. Yes.
Q. Okay. What did you say physically would indicate if he was in drug withdrawal?
A. They are usually profusely sweating, nervous, very agitated.
Q. Did he appear to be this way?
A. No.
Q. He did not?
A. No.
Q. Okay. And why did you indicate in your record that he was in drug withdrawal?
A. He was -- this is what he told me and I have to write in my notes what they tell me is the complaint.

MR. DAVIS: That's all I have, Judge.

THE COURT: Cross-examine.

CROSS-EXAMINATION BY MR. TALASNIK:

Q. Miss Carter, you said that you have been an LPN in the jail for the last 13 months?

A. Yes.
Q. So, the time when you visited with Mr. Highlander, that would have been approximately the first month of your employ there?
A. Yes.
Q. Now, you did not have contact with him until sometime on the afternoon of his admission, isn't that so?
A. Yes.
Q. And you've indicated that you are familiar with the symptoms for drug withdrawal and none of those symptoms were apparent?
A. Right.
Q. That the only basis for your reference was his indication that he was withdrawing?
A. Yes.
Q. His explanation for the pain in the ankle was because he had removed the cast himself while he was on the run?
A. Yes.

MR. TALASNIK: Thank you. Nothing further, your Honor.

THE COURT: Mr. Davis?

MR. DAVIS: I have no further questions.

THE COURT: You may step down, Miss Carter. Thank you very much for coming. Please give the papers back to Mr. Davis, please.

(Whereupon the witness was excused.)

THE COURT: Mr. Davis?

MR. DAVIS: That's all I have, Judge.

THE COURT: Defense rests on the proffer?

MR. DAVIS: Yes, except I want to admit this for the purposes of this hearing, D-4.

THE COURT: Mr. Talasnik?

MR. TALASNIK: No objection, your Honor.

THE COURT: D-4 will be received. At least that page of it marked here. I will mark it at the top D-4 (a) in evidence -- or rather for identification. And I will not mark it in evidence because it may be needed for the trial, but for the purposes of this hearing, I will receive it in evidence.

I would note, counsel, so that we're clear on the record, that the document -- the progress notes appear to be dated May 14th, '88, and among other things it says also had aortic valve replacement on 5/25/88 and hasn't seen a

doctor since being released from hospital. Put on doctor's list for 5/16/88. It's obviously an error in that respect. I'm simply reciting it for the record here so that it is clear that I understand that that's wrong.

MR. DAVIS: That's correct, Judge.

THE COURT: Defense rests. Mr. Talasnik. Anything further on this proffer?

MR. TALASNIK: No, thank you, your Honor.

THE COURT: You want to move to the next proffer?

MR. TALASNIK: Very well, your Honor. I have Officer VanSwearingen.

THE COURT: While you're going to get him, would you find, either on my desk or on the table right by the door, the stack of papers that is S-11, the exhibited transcript? The record should reflect that I've had the opportunity to review S-11, which I will return to Mr. Talasnik as soon as I get it, having considered it in connection with the proffer as to the --

THOMAS VAN SWEARINGEN, having been duly sworn, testifies as follows:

THE COURT: Mr. Talasnik, S-11. And

while you're at it, give D-4 back to Mr. Davis.

MR. TALASNIK: Yes, your Honor.

THE COURT: Thank you.

DIRECT EXAMINATION BY MR. TALASNIK:

Q. Officer, would you tell us where you are employed?

A. The Atlantic County Sheriff's Department.

Q. And how long have you been employed with the Atlantic County Sheriff's Department?

A. Five years.

Q. In what capacity are you employed with the Sheriff's Department?

A. I'm a Sheriff's Officer.

Q. What sorts of duties did you have during the month of May 1988?

A. I was in the Transportation Division at that time.

Q. And what does an officer with the Transportation Division do?

A. Well, little bit of everything, but mainly transport inmates.

Q. And were you involved in that line of work on the 16th of May, 1988?

A. Yes, sir, I was.

Q. What shift were you working that day?

A. 8:30 to 4:30.
Q. I'd like to direct your attention to shortly after 9:30 on the morning of 16th of May and ask whether you were responsible for transportation of an inmate that morning?
A. Yes, sir, I was.
Q. And who was it you were to transport and from where to where?
A. The gentleman by the last name of Highlander, from the county jail to the criminal courthouse.
Q. Do you recognize anyone in the courtroom as being the Richard Highlander that you transported that day?
A. Yes, I do.
Q. Could you point him out, please, for the Court?
A. Sitting there with the blue slacks and yellow short sleeve shirt.
THE COURT: Referring to the defendant.
BY MR. TALASNIK:
Q. Okay. Now, when was the first time that you observed the defendant on the morning of the 16th?

A. He was in the holding cell at the county jail. We went to bring him over to the courthouse.
Q. How did he appear to you that morning?
A. Normal, fine.
Q. Normal, fine, meaning what?
A. Nothing unusual.
Q. Okay. Was he placed into the car for transport?
A. Yes, he was.
Q. Were any other officers present along with you?
A. Yes. Officer Frank Argenteri was with me.
Q. Who was driving and who was -- or where was Mr. Highlander?
A. Mr. Highlander was in the back seat, I was driving, and Officer Argenteri was in the front seat with me, passenger side.
Q. Approximately how long a ride is it from the Justice Facility to the courthouse?
A. A few minutes.
Q. During the course of those few minutes, was there any conversation in the motor vehicle?
A. Yes, there was.
Q. Will you tell the Court about that

conversation?
A. I asked Mr. Highlander where they had picked him up, and he started talking, and -- do you want me to go into what he related to me?
Q. Yes. What was the comment that he made that triggered whatever response you heard from Mr. Highlander?
A. Can I refer to my report?
Q. Did you prepare a report in this case?
A. Yes, I did.
Q. Did you prepare a report on the day that the incident occurred?
A. Yes, I did.
Q. Was it accurate?
A. Yes, it was.
Q. At the time you prepared it, were the incidents fresh in your mind?
A. Yes, they were.
Q. Would looking at that report today refresh your present recollection about what happened on May 16th, 1988?
A. Yes, it would.
Q. All right. You can look at your report, and I would ask the same question: What was it that you said that triggered whatever response

there was from Mr. Highlander?
A. I asked him where he was picked up.
Q. And that was the comment or the question or statement that you made?
A. That was the statement I made.
Q. And in response to that, what, if anything, did you hear Mr. Highlander say?
A. And he replied in South Carolina. Can I continue with his statement?
Q. After he said in South Carolina, did you ask any other questions?
A. No, I didn't.
Q. Did he continue to speak, however?
A. Yes, he did.
Q. All right. Tell us what he said.
A. After he stated he was in South Carolina, and then he continued to talk. He said he almost got away clean, and he had gone into the men's room at the bus terminal and shaved his beard, but the FBI caught up with him. He then said he was ready to face the consequences for shooting her. He said he felt much better after pulling the trigger. Mr. Highlander stated he felt as though he baptized himself and that it gave him peace of mind.

Q. Now, was any of that information in response to any other questions that you asked?
A. No, sir, it wasn't.
Q. What about the other officer in the car, did he ask any questions to cause these responses?
A. None at all.
Q. Did you respond in any way to this information that was given to you by Mr. Highlander?
A. Not at all.
Q. At the conclusion of those statements, what happened next?
A. We took Mr. Highlander to the holding area in the basement of the courthouse. I went up and reported what was stated to me to my sergeant, and he asked me to make up a report for the chief.
Q. Okay.

MR. TALASNIK: Thank you. I have no further questions, your Honor.

THE COURT: You may cross-examine.

CROSS-EXAMINATION BY MR. DAVIS:

Q. Officer, you indicated that you were a Sheriff's Officer on May 16, 1988?
A. That's correct, sir.
Q. And up to that point, how long had you been

a Sheriff's Officer?
A. You're talking four years.
Q. Did you receive any training?
A. I certainly did.
Q. And in this training, did they give you any sources in terms of whether you should converse with prisoners or not?
A. No.
Q. None?
A. No.
Q. Now, when you obtained Mr. Highlander, that was from orders of your superior to take him to the Court?
A. That is correct.
Q. And did Mr. Highlander speak to you at that time? When I say speak to you, speak to you about his case when you went to the jail to pick him up?
A. No.
Q. Did he have any conversation with you before being spoken to that morning?
A. I can't recall.
Q. Okay. Now, when you got him into the sheriff's car -- what was it, a car or van?
A. It was a car.
Q. Car?

A. Car.
Q. And between the front seat and the back seat, is there any partitions of any type?
A. Yes. There's a plexiglass partition, but there's vents on either side, open vents.
Q. So you can talk from front to back?
A. Yes.
Q. Now, when he got into that vehicle, did he speak to you initially about anything concerning his case?
A. No.
Q. Okay. Is it also true to say that he was in custody at the time that he was in that sheriff's car?
A. He certainly was.
Q. And you knew that he was in custody?
A. Yes.
Q. And you proffered a question to him concerning his case, where did you get picked up?
A. Are you asking me?
Q. Yes.
A. I asked Mr. Highlander where he was picked up, yes.
Q. Why did you ask him where was he picked up?
A. I had read something in the paper about the

case and he had stated that he was extradited from some other state.

Q. When you asked him where he was picked up, you were questioning him concerning certain facts surrounding this case, is that not true?

A. Not intentionally, no. No.

Q. Whether it was intentionally or unintentionally, you were questioning him about it?

A. That's why I asked Mr. Highlander where he was picked up.

Q. As a result of you asking him that question, he then entered into the dialogue you just indicated to the Court?

A. Just as my report states. That's all that was said.

Q. Now, prior to you asking him any questions, did you read him any type of -- you're familiar with Miranda warnings?

A. Oh, certainly.

Q. And you've used them before, I'm sure?

A. Certainly.

Q. Okay. Did you read him any Miranda warnings?

A. No. It wasn't my intent to question him

about anything. It was just conversation.
Q. But the conversation -- well, we know what the conversation was.
A. Yeah.
Q. Once he started into the conversation, did you attempt to stop him at any time and at that point warn him?
A. No, because I didn't -- I didn't expect to hear what I did. It was a short statement and I. . .

MR. DAVIS: That's all I have, Judge.

MR. TALASNIK: Nothing further. Thank you, your Honor.

THE COURT: You may step down, Mr. VanSwearingen. Thank you very much.

THE WITNESS: You're welcome.

(Whereupon the witness was excused.)

THE COURT: Mr. Talasnik, anything further on the proffer?

MR. TALASNIK: No, thank you, your Honor.

THE COURT: The State rests, Mr. Davis, on that proffer.

MR. DAVIS: I have no further witnesses, your Honor.

THE COURT: The defense rests on the proffer. Gentlemen, is that the extent of the testimony with respect to the State's proffers?

MR. TALASNIK: Yes, your Honor. With respect to admissions made to law enforcement officials while in custody.

THE COURT: All right. Mr. Davis, I'll hear you on proffers, what I'll call two and three, which are actually three and four on the one hand, and five and the other on the letter.

MR. DAVIS: Judge, with respect to the initial proffer that was presented this morning, I would indicate to the Court this: One, that when Mr. Juliano took the initial statement, the part that gives me great concern is that he indicated to the Court that the defendant was in the courthouse as a companion, and I indicated to the Court that that companion was the Public Defender and was his Public Defender. Knowing that, Judge, knowing what the defendant was charged with, having spoken to the FBI, having had background of all that had transpired, regardless of that, your Honor, he then proceeded to take the defendant's statement without conferring with his attorney at that point. Keeping in mind, Judge,

that at the time that he indicated to you that he took his initial oral statement, he was still in Columbia, South Carolina where the defendant was lodged or had initially been lodged, and as indicated by Mr. Juliano, your Honor, did have an attorney.

With regard to the second statement, Judge -- and I'm saying second, I mean the one given in Margate -- I think the Court has to give a great deal of thought to the fact that this defendant was in handcuffs in the presence of Mr. Juliano and Lt. Welsh from anywhere from 3:30 on. I think the Court also has to take into consideration that he was shifted from the courthouse to the airport, to the airplane, from the airplane to Philadelphia, remained in the airport in Philadelphia some three hours, then transported, your Honor, from Philadelphia down here to Atlantic County.

I have a problem, Judge, with some of the credibility of Mr. Juliano. I think after the defendant is in custody for some 12 hours -- and I'm not counting the time that he was lodged in the Richland County Jail -- once he is in their custody for that long, and it's continuous,

there's no question it's continuous, he does not have any opportunity to speak to anyone, he didn't say it, but he still didn't have the opportunity, Judge. Then he's brought to Atlantic County, and the Court is well aware of the geographical conditions in Atlantic County, that they had to go by the county jail in order to get to Margate. Mr. Juliano indicates that he had to go to Margate to have the defendant fingerprinted and mugged. I have problems with that, Judge. He went to Margate for the purpose of taking a statement.

I have another problem, Judge, when he indicates that he was in South Carolina, that he had spoken to the FBI, that he indicates that he had taken an initial statement. He further indicates that he had made certain amounts of investigation on his own prior to questioning -- or picking up Mr. Highlander in South Carolina. And I say all of that, Judge, to indicate that Mr. Juliano knew basically the facts of this case. And then for Mr. Juliano to take that witness stand today and tell you that he had a brief conversation with the defendant prior to him giving that statement, and the Court now realizing that this so-called brief statement, your Honor,

was an hour 15 or 18 minutes, indicates to me, your Honor, that during that hour and 15 to 18 minutes, that the defendant really didn't want to make that statement.

And if the Court will consider the fact that if the defendant got up they saw him at ten, if he had to get up an hour before, that's a long day from nine o'clock in the morning until approximately 2:23 in the morning, and just under ordinary circumstances, just the person being up that long, not considering the fact that you're in handcuffs, not considering the fact that you've traveled across five or six states, not considering the fact that you had remained in certain airports for three hours because you didn't have a ride, not considering the fact that you're under the pressure of being under arrest and all that goes into that emotional state, then to take you to the city jail -- or city police department, and at that point, and under those conditions, to then ask you for a statement, Judge, it would indicate to me that any person of ordinary circumstances, their resistance would be down. I think it's at that point that Mr. Juliano took the statement. I think it's at that point

that the defendant caved in under the stress and pressure.

I would also indicate to the Court that there would have been no problem to lodge Mr. Highlander in the Atlantic County Jail or any other jail, let him sleep and come back the next day, and if, in fact, he still wanted to make a statement at that time, a taped statement, your Honor, they could take it.

With regard, Judge, to the last one, with regard to the Sheriff's Officer, I would indicate that, to me, this is a clear case of the defendant being in custody, the defendant not saying anything with regard to his case, being picked up, the officer intentional, unintentional, I don't know. One thing we do know is he was nosy, and I think he went out of his bounds. If the man's in custody, if you want to question him, you're supposed to give him his Miranda warnings, and there's no question to me that that was not done in this case, and whatever the answer was, was improper and went against the defendant's fifth amendment rights.

Under those circumstances, your Honor, I think it should be suppressed.

THE COURT: Mr. Davis, before you sit down, let me ask you one other question: Differentiating for purposes of this question between the oral statement that he was said to have made in South Carolina to Juliano and Welsh, on the one hand, and the oral and taped statement that he had gave in the police station to the same some two hours later, if I should decide that testimony about the first is barred for the reason you suggest, failure to consult with counsel before seeking permission to inquire of the defendant, if I should decide that, what impact do you perceive such a decision would have on the admissibility of any evidence regarding the statements made in the Margate Police Department?

MR. DAVIS: Judge, at that point, I guess I'd have to get to the cat out of the bag theory, that --

THE COURT: Wait. Keeping in mind in answering that question that I've already ruled that the statements made to the FBI, and of which Juliano said he had notice and knowledge, were properly taken and were admissible.

MR. DAVIS: I understand that, Judge, but I'm just directing my comments to Mr.

Juliano. And I'm saying this: That if Mr. Highlander gave the oral statement -- the initial oral statement to Mr. Juliano, and then subsequently he gave the taped statement, and you're indicating to me that if, in fact, you ruled the initial statement improper, what effect does it have on the second statement? Regardless of what he said to the FBI, just what he says to Mr. Juliano, I'm indicating to the Court that I would rely on the theory of the cat out of the bag. I'm saying that because from the time he gave that initial oral statement, there's no question in my mind that this man was continually in the company of Mr. Juliano.

Even though Mr. Juliano denied the fact that he spoke about the case with Mr. Highlander in the plane, there was conversation, no question, there was conversation in the car coming back to Margate, and then there was conversation in Margate, and to me, even though it's an extended amount of time, Judge, to me it's almost a continuous thing because the defendant never had a break. There was never a break. If he had had a break, I would look at it differently. But the fact that he was with them

continuously, and he knew that he had made the first statement, the cat's out of the bag, I told them once in South Carolina, I might as well tell them in Margate. That's the theory I would take.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Your Honor, in your analysis of the statements that were proffered yesterday, you went through a -- what I perceived to be a very logical, common sense to the issues that have to be addressed.

THE COURT: That's because you won.

MR. TALASNIK: No, not because of the result but because of the thought process. I'd like to, if I could, borrow, plagiarize that sequence for purposes of addressing the Court today. What you did was to say that you had to answer three questions: First, were the statements given as a matter of fact; secondly, was there compliance with Miranda, and were the Miranda warnings given and was there a waiver and; thirdly, was the statements, if they were given, if Miranda rights were given, were they voluntary.

I would like, with the Court's permission, to proceed to analyze the statements

that way. There are actually four separate statements.

THE COURT: There are really, in essence, Mr. Talasnik, two issues to which I would like you to address your attention.

MR. TALASNIK: Okay.

THE COURT: Three. Three issues. One, Mr. Davis suggests that the testimony of the statements made in South Carolina should be barred by reason of the failure to consult with the person that the officer had reason to believe was the defendant's attorney at the time; second, if that argument is valid, and the testimony of that statement should be barred, what impact, if anything, is there on the testimony of the statements and the taped statements in Margate and; third, the VanSwearingen situation. Those are the focal points that I'd like you to address yourself to.

MR. TALASNIK: Okay. With respect to the first issue, I do not perceive that the law is that simply because an attorney has had contact with a litigant, or a litigant has had contact with the attorney, that that litigant is forclosed from making a knowing and voluntary waiver of the

right to consult with counsel before giving a statement.

First, there is a question of fact as to whether the attorney that was in the federal extradition hearing at the time that Mr. Highlander was there was representing Mr. Highlander. There is some testimony, if you add yesterday's and today's, that the person was physically present, that there may have been some conversation between the two, but that it began at the point of the hearing, it ended at the point of the extradition hearing, and there followed a transport to another extradition hearing and back to the county jail without there being any contact between defendant and lawyer before the hearing and no contact between them after the hearing.

Under those circumstances, I suggest, it was not unreasonable for Investigator Juliano to conclude that that was not Mr. Highlander's lawyer for purposes of representing him on the criminal charges, that that was an officer of the Court appearing with Mr. Highlander for purposes of ensuring the integrity of the waiver of the extradition process before the federal magistrate.

Even assuming that that conclusion by Investigator Juliano was not reasonable, although I suggest that it is, I think that there is authority for the proposition that a defendant still possesses the right to make a knowing and voluntary waiver of his right to counsel notwithstanding that he has had contact with an attorney. The closest case I could find over the lunch hour was State versus Kennedy which is a State -- a reported opinion of the New Jersey Supreme Court, beginning at -- in volume 97 beginning at page 278. It's a 1984 opinion.

If I recall the facts of that case correctly, Mr. Kennedy was in the county jail waiting to be sentenced on a couple of armed robberies, and he had either pled guilty to or been convicted of those armed robberies and he was represented by an attorney. While in the county jail, between the time of his conviction and the time of his sentence, he decided to attempt to mitigate his sentencing exposure by cooperating with law enforcement authorities and so he contacted the Essex County Prosecutor's Office and offered to provide information to them about some homicides, some unsolved homicides about which he

had information.

They brought him over, and they contacted his attorney who represented him on the armed robberies. The attorney came in, visited with his client and gave his client pretty much discretion to do what he wanted. They proceeded to ask questions of Mr. Kennedy that day, nothing particularly productive occurred. They return him to the county jail until the next morning.

The next morning, they brought him back again and began to question him, and at that point, he began to make statements that would inculpate himself in one of these unsolved murders. The officers, realizing that he was making statements that were inculpating himself in the unsolved murders, stopped him and gave him Miranda warnings, including the warning that he had a right to remain silent, that he had a right to consult with an attorney, that if he couldn't afford one, one would be obtained for him. All of the standard and required Miranda warnings.

At that point, the defendant waived his rights, waived his Miranda rights and proceeded to give statements that ultimately led to the charge and the conviction of Mr. Kennedy

for participation in one of these unsolved killings.

The Supreme Court addressed the issue raised on appeal about the failure of the Prosecutor's Office personnel to stop questioning at that point, knowing that Mr. Kennedy had an attorney on the unrelated armed robbery charges, and the Supreme Court refused to find that there was any Constitutional violation indicating that a defendant has the right to waive his right to counsel, notwithstanding that he may have been represented.

I would quote, beginning at page 238 of the opinion as follows: Further, it was determined on remand that defendant's attorney only admonished defendant not to incriminate himself, a warning defendant was free to heed or ignore. The Court found that the attorney himself had placed no limitations on the Prosecutor's right to question defendant. The bare fact that defendant had counsel representing him cannot be construed to preclude defendant from effectively waiving his right to remain silent and to have an attorney present. And then there's reference to a 1971 decision of the Supreme Court.

What I'm indicating to the Court, your Honor, is argument in the alternative, the first being that Officer Juliano reasonably believed that the attorney who was present with Mr. Highlander at the time and place of the federal extradition hearing was not representing Mr. Highlander in the sense that it was in any way necessary to contact that attorney before questioning Mr. Highlander. Given the sequence of events, that there was a subsequent hearing at which this attorney was not present, there was a trip back to the county jail and the attorney was not present then, and the following -- or that very afternoon Mr. Highlander didn't say, well, listen, I've got an attorney, I want you to talk to that attorney first, given all of that, it was not unreasonable for the officer to conclude that that attorney was not representing Mr. Highlander.

The alternative is that if the Court finds that there was an obligation somehow to know that this attorney represented Mr. Highlander on these charges, that the -- that Mr. Highlander was nonetheless able to knowingly and intelligently waive his right to counsel, and that he did so by

executing the rights form that was shown to the Court and that is marked S-7 for identification. That rights form, as was testified to by Officer Juliano, was read to the defendant beginning at 2:15 in the afternoon.

Included within the advice of rights are references to the right to consult with an attorney, to have counsel present during interrogation and before making any statement, that if you decide to answer questions without a lawyer present, you have the right to stop at any time -- you have the right to stop answering at any time until you talk to a lawyer, if you can't afford to engage counsel, the Court will appoint one for you without any charges. All of these rights were given to Mr. Highlander, both orally and in writing, by Officer Juliano that afternoon.

And there is no evidence from which the Court should conclude that Mr. Highlander's condition was such that he couldn't understand what he was being told. There is no evidence that Mr. Highlander had been deprived of sleep the night that he spent in the county jail, there's no evidence of any physical or mental abuse that was

visited upon Mr. Highlander. Officer Juliano indicated that after reading each one of the rights, he looked up at Mr. Highlander, that Mr. Highlander acknowledged understanding those rights, that Mr. Highlander himself read the statement at the bottom of the page: I have read this statement of my rights and I understand what my rights are, I'm willing to make a statement and answer questions, I do not want a lawyer present at this time, he read all of that.

And this is a man who, as your Honor pointed out yesterday in your findings, was not unfamiliar with the criminal justice system. A man who, in his own testimony yesterday, admitted that he had been arrested before, admitted that he had been given his rights before, admitted that he had given statements before and he knew what lawyers were all about.

Under those circumstances, I suggest to the Court, that even assuming that Officer Juliano should have known that the federal public defender represented Mr. Highlander, that by signing this form, by listening to the rights read to him, given his then state of mind, given his background, given his experience, given the

absence of any evidence that would cause the Court to doubt that he was sane and cognizant of what was going on at the time, that there was an effective waiver of those rights such as would permit the questioning and the voluntary statements that followed. That was the first question that the Court had.

With respect to the second issue, and that is --

THE COURT: I forgot what the second question is. I remember -- all right.

MR. TALASNIK: The second question was, assuming for purposes of argument that there is a problem with the first offered confession --

THE COURT: Right.

MR. TALASNIK: -- of what effect is that problem on the confessions that were given first orally and on tape to the officers in the Margate Police Department?

That calls upon the Court to look at the issue of attenuation, of taint, and in that regard, I would cite to the Court Oregon versus Elstad, which is a decision of the United States Supreme Court, which decision is accepted by the New Jersey Supreme Court in State versus Hartley

which is reported at 103 New Jersey beginning at page 252, a 1986 decision of the Supreme Court. As I understand those opinions, there is an indication that, if a voluntary statement is given at point A, but the voluntary statement was obtained in violation of Miranda, that does not necessarily taint subsequent statements if those subsequent statements are voluntary and in compliance with Miranda.

As I understand the opinion, in order for there to be such impermissible taint that all subsequent statements are not to be admitted, the Court would have to find, not only that there was a failure to comply with Miranda vis-a-vis the first statement, but also that that first statement was involuntary. So long as the first statement was voluntary, the fact that there may not have been technical compliance with Miranda does not taint or interfere with the admissibility of subsequently given statements so long as those subsequently given statements are in compliance with Miranda and are voluntary.

And so I suggest to the Court that there is clear evidence that the subsequent oral and taped statements were given in compliance with

Miranda and were voluntary for reasons I will discuss if the Court wants me to.

THE COURT: No, I don't need to hear you on that. I need --

MR. TALASNIK: Then I would suggest that that means that even if the Court finds a Miranda type violation with respect to the oral interview in South Carolina, that any such problem was cured by the proper giving of Miranda warnings, the new waivers of Miranda rights in the Margate Police Department with respect to the oral interview and the taped statement that were given by this defendant. And I would remind the Court that there were new Miranda warnings given including the right to counsel, both before the Court interview, as is memorialized in S-8, and before the tape statement, which is memorialized in the transcripts that the Court read, and our position being that since Miranda was complied with new knowing and voluntary waivers and the statements were voluntary, that even assuming a technical problem with the first, since that first one was at least voluntary, that the second and third statements to Officer Juliano are saved any taints.

The third question that the Court had --

THE COURT: The VanSwearingen --

MR. TALASNIK: Okay.

THE COURT: -- inquiry.

MR. TALASNIK: There is no question but that the defendant was in custody. There is no question but that the question "where did you get picked up" constitutes interrogation. I had considered arguing to the Court that it's a more of a Rhode Island versus Innis situation, but interrogation is a question, and there's no question but that a question was asked.

The State's position with regard to that statement is that if the Court finds as a matter of fact that valid Miranda warnings were given at an earlier time and that there was a voluntary waiver of the Miranda rights at an earlier time, that there is no necessity to readvise a defendant of his Miranda warnings every time he's about to make that statement.

For that proposition I would cite specifically State vs. Helwa, 223 New Jersey Superior, page 40, Appellate Division in 1988, which in turn refers to a slightly older Appellate

Division decision State vs. McGee. In Helwa, the principal focus of the Court was on whether, if a defendant is criminally charged on day one and is given Miranda warnings on day one, can he be interviewed by a DYFS worker in the county jail about a day and a half later without giving new Miranda warnings. The Appellate Division said that since the DYFS worker was asking for information that touched upon a criminal charge, there would be ordinarily an obligation to give Miranda warnings, but since there had been an appropriate giving of Miranda warnings on the day of the arrest, and there had not been an affirmative ascertion of the right to remain silent and there had not been an affirmative ascertion of right to counsel, that it was permissible to interview the defendant a day and a half later in the county jail without the necessity of giving additional Miranda warnings.

And in the discussion of that matter, that's where the reference to State versus McGee comes in. And in that situation, there was a two day lag between when the valid Miranda warnings were given, the valid waiver obtained, and the questioning occurred two days later without new

Miranda warnings. That is the basis on which the State would proffer the inter -- or the statements that were made in transit from the county jail to this courthouse for arraignment.

THE COURT: Okay. Thank you. Would you be good enough to give me the several paper exhibits? Do you have need of the cassettes? I'll take seven, eight, nine, 11. Do you have a puppy dog at home, Mr. Talasnik?

MR. TALASNIK: No, your Honor.

THE COURT: I just had a feeling you had some experience in throwing bones and I just wondered where it came from. I'm not going to indicate on the record at whom I think the bone is thrown, Mr. Preston.

Starting in terms of the factual determinations with the morning of May the 14th, when we last met, Mr. Highlander -- May the 13th, Mr. Highlander had been taken into custody on the 12th and after what we discussed yesterday, was placed in the county jail in South Carolina to await further proceedings. The Federal Bureau of Investigations, through Special Agent Davis, contacted the Atlantic County Prosecutor's Office, and/or the Margate Police to advise of the custody

of Mr. Highlander, in response to which Mr. Juliano from the Prosecutor's Office and Mr. Welsh from the city police department went to Columbia, arriving there -- frankly, I don't remember whether they went there the night of the 12th and met the FBI in the morning or whether they arrived early in the morning other 13th.

In either event, at ten o'clock in the morning on Friday, May the 13th, Welsh and Juliano arrived at FBI headquarters where they met Davis and where Davis briefed them on his contacts with Highlander from the day before, including the fact and content of the statement that Highlander had made in general and that the statement was made by Highlander after having been advised of his rights. The two Atlantic County officers, I'll call them the local officers -- by local officers, I refer to Juliano and Welsh -- went with the FBI to the jail to pick up the defendant or escort the defendant to the federal court for an extradition process before the United States magistrate that morning. The defendant appeared before a United States magistrate on the outstanding fugitive warrant, unlawful flight to avoid prosecution, where he was quiet and

responsive to the questions of the Court, and where he agreed to waive extradition.

I find that in connection with that proceeding, the defendant had access to and did consult with an individual who I will conclude was a public defender within the federal court process, and who was made available to the defendant to assist him in connection with the extradition process. It is a structure with which I am familiar, as I am satisfied from the evidence I've heard, they did the same in this context which we do frequently here, we impose upon the local defender's staff, who are officers of the Court and are here usually everyday, to assist in dealing with the extradition matters that frequently will come up unexpectedly. And rather than keep a potential extraditee locked up for several days to have a much more formal appointment process for counsel, I am satisfied that the magistrate lined up the public defender who was there to provide assistance to the defendant.

For that process, the defendant was taken to the local courts in Columbia, essentially for a mirror match. In addition to the federal

warrant, there was a fugitive warrant issued by the South Carolina authorities with respect to which the defendant was likewise being held. He appeared before a local judge there, again appeared responsive and aware of what was going on, signed a waiver of extradition there in the form of S-6, which I don't have before me but which I do remember seeing.

At that point, there was a discussion either with the Court or with the law enforcement officials as to the defendant initiating a request to arrange a shower and shave and generally a clean up before being transported back to New Jersey. His interest in that respect were accommodated by having the local officers, through the good offices of the FBI and the Sheriff's Department in the county in South Carolina, in having the defendant taken back to the county jail where technically he was no longer held. Because of his waivers on all of the warrants, he was at that point in the custody, I am -- legal custody of the local officers here. But through some cooperation, the defendant was given the opportunity that morning to get himself cleaned up.

While that was going on, the local officers went to the FBI office and got some documents and otherwise made arrangements for preliminary arrangements for the return. During the morning, the defendant was friendly and talkative, he did not manifest any physical or medical complaints and did not manifest any appearance of withdrawal or evidence of use of or influence of any alcohol or intoxicants of any kind, including controlled dangerous substances. At no time during the course of the morning did he affirmatively request counsel, nor did he initiate any request not to be interviewed or answer any questions about the case.

At approximately 1:20 in the afternoon, the local officers went to the local jail to get the defendant. He, by that time, had been cleaned up. Again, I don't want to suggest -- well, just indicate that he had a shower and presumably shaved and changed his clothes at that point. He was lucid, awake and alert, had no particular complaints, appeared well rested and responsive. He was taken to an interview area of the jail where, in the form I have before me, as I said, he was advised of his

rights. He read the waiver portion, signed it, and I am satisfied understood his rights at that point. I further reach that conclusion by reason of the testimony from yesterday that the defendant had some prior experience in this area and knew what the process was about, knew of his right to remain silent, understood its meaning, and was prepared to waive that.

He was requested at that point, which is approximately 2:15 or 2:20 in the afternoon on the 13th, to give a statement, to which he agreed. It was also requested at that point by Juliano to provide a taped statement, which he declined at that time to do. At that point, there was an interview with the defendant, which interview took approximately an hour and lasted till about 3:20, during the course of which he made a number of statements with respect to the matter.

At or about 3:20 or so in the afternoon, the defendant, in the custody of the local officers, was taken in custody to a local airport and arrangements for a flight back to Philly, which was eventually arranged with a connecting flight through Washington after

substantial delay caused by the difficulties in arranging an appropriate flight and paying for it. During the delay, which I find to have been somewhat in the three hour area, the defendant was in the custody of the local officers in the airport in South Carolina while they were awaiting the connect. They then flew from South Carolina to Washington to Philly, a process, which I may infer by working backwards, got them to Philly, in my view, somewhere in the neighborhood of ten o'clock in evening.

I infer that both from the reason of the fact that they were waiting in the airport in South Carolina for about three hours, they got to that airport somewhere, I would infer, between 3:30 and 4:00, which means that they might have left South Carolina somewhere in the 6:30, seven o'clock area. I don't have any evidence of how long the flight was or what the time in Washington was, but I do know that they got to Margate at 12:15, that they didn't take a direct route there, that they first stopped at the Prosecutor's Office to pick up a car, they had to wait a few minutes at the airport, and I, therefore, infer -- in Philly before they got picked up, I, therefore,

infer that they landed in Philly somewhere between an hour -- it was an hour after they got to Margate because it would usually be, on a direct basis, at least the way I do it, about an hour and five minutes to get from the airport to Margate, and given who they were and the time of night they were driving it, they could have made it at least that fast.

The testimony is that he arrived in New Jersey at 10:30 or 11:00 in the evening. I interpret that as meaning arrived in Philly 10:00 is pretty close, I think it might have been a little earlier than that. In any event, during the period of the flight, they had very little to eat. The defendant dosed. There was some conversation during that period that I find not to be particularly germane to the details of the circumstances of this case.

They arrived in the Margate Police Department at around midnight or so, a few minutes after. They ordered food for everybody, including the defendant. While they were waiting for the food, the defendant was processed, by which I mean his photographs were taken, his fingerprints were taken, the arrest records were made up and the

like. The food arrived after the processing. They all ate, including the defendant, and he was travel weary, but again manifested no complaints. He was anxious to talk and wanted to tell his story.

At this time, which is approximately one in the morning, he was again asked if he would be willing to make a statement -- a taped statement, and at this point, he indicated that he would. At 1:05, he was again advised of his rights in the form I have before me as S-8. He read them, he understood them and signed them and, again, I am satisfied that, at that point, he understood all of his rights and waived them and agreed to make a statement.

For the next hour and approximately 18 minutes, he engaged in a discussion with counsel -- with the local officers, Juliano and Welsh dealing substantively with the facts and circumstances of the case. At the end of that period of time, Juliano commenced the taking of a taped statement at 2:23, which taped statement is in the form before me as S-10 and 11, occupied the time between 2:23 and 3:54 a.m. I listened to selected portions of that statement and I have

read the transcript of the statement.

At approximately 3:54, the statement ended. The defendant was then transported to the the Atlantic County Jail where he was received sometime between 4:00 and 4:30 on the morning of May 14th. Eight hours or so later, around noon of that day, he was seen by a nurse, Ms. Carter, of the Justice Facility, to whom he complained of pain in his left ankle and of drug withdrawal. She, licensed practical nurse, observed no symptoms of withdrawal from any drugs or alcohol, but did observe that his left ankle was swollen and apparently painful to the touch as a result of which she gave him certain medications with respect to that and arranged for him to see a doctor, this having been on Saturday, at noon on Monday.

On Monday, the 16th of May, the defendant was picked up at the county jail by Sheriff's Officer VanSwearingen and another for transportation here to this building for what I may infer was a preliminary arraignment on the arrest warrant that was signed Saturday morning in Margate. The transportation from the county jail to this Court was testified as a few minutes. I

will indicate for the record, because I am satisfied that I may take judicial notice of the fact that the county jail is located about a mile or a mile and a quarter down the road, and that a few minutes is right, with the emphasis on few. In any event, in the car, VanSwearingen driving the van with the defendant in the back seat, having read a newspaper article, it was suggested that the defendant had been brought back on an extradition or waiver, asked the defendant where he had been picked up. The defendant indicated that he had been picked up in South Carolina and then went on to make certain other statements that are here sought to be admitted.

At no time during the period that he was in custody of the local officers did the defendant request the opportunity to confer with counsel. At no time when he was in the custody of the local officers -- and I say that meaning in their custody in South Carolina, in between South Carolina and Margate, in Margate or on the way to the county jail -- at no time did he at any time request not to be interviewed, request not to make any statements or request to cease making any statements.

At the outset of the taking of the taped statement, at approximately 2:23, the defendant was again advised of his rights in the form that is presented in S-11 and S-10 (a), where his rights are read to him and where he indicates, and I find, that he understood those rights and agreed to waive the right to remain silent and the right not to make any statements without the presence of counsel or without -- and the right to make no statements without consultation with counsel.

Let me address the legal consequences of all of that in, at least initially, the reverse order. I'll start with the statement made in the car to VanSwearingen and the other Sheriff's Officer Argenteri on May the 16th. The State is obliged to establish beyond a reasonable doubt that the statement was made in knowing and voluntary waiver of the defendant's right to remain silent, among others. As the State concedes, and it is not disputed that, A, there were no rights afforded by VanSwearingen; B, that the statement was custodial in nature; that is to say, was made while the defendant was in custody and; C, that the State concedes that it was the

result of interrogation.

The State seeks to buttress its position -- or to found its position on the theory that the record reflects that the defendant had been advised of his rights on at least, in the last three days prior to this, one, two, three, four, five occasions that immediately come to mind, by the various officers on the 12th, 13th and 14th of May, and that the defendant, as a matter of fact, was well aware of his rights by the time he got into that car on the 16th, and that, therefore, any statement that he did make, even though it was in response to interrogation, was, in fact, voluntarily made in knowing waiver of those rights.

I am not satisfied that that has been established beyond a reasonable doubt and will deny the State's application to adduce evidence of that statement in its case in chief.

I am not suggesting that VanSwearingen was improper but, in fact, I think Mr. Davis used the words, he was being a bit nosy. I think it was in good faith, but I don't think that makes a difference. There is too fine a line between a good faith social conversation,

hi, how are you doing, where did you get picked up, which is what I essentially think happened here, and where did you get picked up, meaning either to elicit some fact in response directly to that question, or what happened here, which was, once again -- or not the first time, pulling the finger out of the hole in the dike. The fact is that I am satisfied that the statement was in response to interrogation, albeit a almost social interrogation, it was custodial.

I am satisfied, under the rationale of the Hartley decision and others, that the bright line contemplated here was crossed and that that statement should not be permitted to be proffered in the State's case in chief. I find, in fact, that it was voluntary.

So the record is clear as to all of my fact findings, I am satisfied, notwithstanding the voluntariness, that it was not made -- and notwithstanding all of his background and all of his experience, that it was not made under those circumstances in knowing waiver of the fact that it could be used against him and that he had a right not to say anything in response to the question. Therefore, it may not be used.

Now, backing up -- go back down to South Carolina and discuss what happened there. Let's deal first with the statements, the testimony of the oral statements made in the South Carolina jail that afternoon between, say, two and 3:20, something like that. Here again, this was custodial, here again, to be certain, it was as a result of interrogation and here I find, as I've indicated, that the defendant was afforded his rights which he understood and which he knowingly waived.

The issue then presented is whether, notwithstanding the nominal compliance with all applicable procedural requirements, the evidence of the statements should be excluded by reason of the fact that the officers knew that he had counsel and that they were required to consult with counsel or to afford this defendant the opportunity to do so before they interrogated him. I don't think that on these facts that is a proper statement of the law. I'm accepting as a fact that the woman that apparently appeared in federal court was, indeed, for this purpose, his attorney, although there is no factual response to that, but let's just start from that factual

premise.

Once the extradition process was completed, it is hard to imagine that that attorney has any degree of authority or responsibility in connection with the matter. Indeed, once he left the federal courthouse, she has no standing at that stage, in my opinion, to continue to act on the defendant's behalf, that the only matter in which she had any authority or responsibility to act was in connection with the federal warrant for unlawful flight to avoid prosecution, which was disposed of by the defendant's extradition waiver.

I'm, frankly, not particularly impressed with the analogy to State vs. Kennedy, because there the defendant, indeed, exercised his right to counsel and proceeded to make the statements that he made after having exercised the right. But here, I am satisfied that he did not have, in fact, counsel acting for and on his behalf at the time these statements were made, and in any event, I have found, and do find again, that the statements were voluntarily and knowingly made in waiver of his right to seek counsel, which he full well understood at that point.

I am, therefore, satisfied that the statement established -- that the statements made by the defendant to the local officers in South Carolina are admissible as a part of the State's case in chief.

Turning to the statements made in Margate. There are, as I understand it, two points of issue with respect to the admissibility of those statements. First, if, in fact, the initial or original statements made in South Carolina are to be excluded and; secondly, that the statements made in Margate were not voluntarily given in that they were the result, in part, in the defendant's status as having been in continuous custody all the day, and having had little sleep and being late at night, and they should have waited until the next morning.

Let me deal with those in that sequence. First, I've already ruled that the statements in South Carolina are admissible. I want to turn, so that the record is complete, to a disposition of that issue if I had made the opposite ruling. I am satisfied that even if, by reason of the failure to consult with counsel in South Carolina, the statements there were not

admissible, the statement made in Margate would be.

I reach that conclusion for the following reasons: First, before they took any statements from the defendant, the local officers had had the opportunity to confer with the FBI and knew of the fact and contents of the statements made by the defendant to the FBI; secondly, the statements made in Margate were made in the early morning hours between 1:00 and 4:00 a.m., some ten hours and several hundred miles from the time and place of the original statements in South Carolina to them. In between, the defendant was advised once and then again -- once at one o'clock and again at 2:20 -- of all of his rights, and in each instance he knowingly and voluntarily waived those rights.

I am satisfied that to whatever extent it may be said that the original statements are not admissible, albeit that they were voluntary -- and they were -- there is no legal or factual connection between those statements and the ones given in Margate. In other words, I am satisfied that the statements in Margate are factually and legally independent of those given

in South Carolina and that they may be considered on their own basis rather than with respect to being the fruit of the poisonous tree or become tainted by any impropriety regarding any South Carolina statements.

The last issue turns on the voluntariness and the circumstances of the taking of the statements in Margate. It is for that reason that I listened to selected portions of the tape in S-10 (b). I deliberately selected the last portion of the statements because I wanted to hear what the defendant sounded like after an hour. I wasn't particularly concerned with the substance of what he was saying, I was listening for his tone of voice, I was listening for any evidence in his voice of either fatigue or frustration or pressure or anxiety or distress or resentiment or anything of the kind that would suggest to me that the statements were the product of anything other than what is testified as being his desire to tell his story.

And in that regard -- by the way, before I make the specific findings in that -- these pages aren't numbered, which is really not a very good idea, Mr. Talasnik, if you're going to

use these -- but I would refer to a portion of this transcript --

MR. TALASNIK: My copy is numbered if it will make it any easier.

THE COURT: It may help. You might as well give me that so that when I find it, I can refer to it by the page number. It's the last sentence on a particular page and what I'm just doing is looking through the pages to find it. Here. Turns out I don't need it, it's on page three. Last sentence on page three reads this is -- after a lengthy statement, the question was: And when did this occur, about what month? This is when he's deep in his background in the relationship. Answer: This was -- this will be two weeks before she took out the restraining order. Question: Okay. Answer: Okay.

And now what follows goes for several minutes of statement by the defendant -- on the last page here he says: This is important to the investigation. I mean, what I'm saying, I feel that it's important. I noted that sentence because it is consistent, in my view, with what I believe was happening here. The defendant, in what he perceived to be his interest, wanted his

story told his way. He wanted the police to understand why and under what circumstances and under what he described as the motivations he did what it was he said he did. I am satisfied that he did all of that in the interest of having them know of why and how and what he did.

In any event, the portions of the transcript that I listened to, which as I've said are designed to come near the end of the inquiry, showed me that the defendant was calm, his responses were, for the parts that I listened to -- I understand there are portions of the transcript, and I've seen them, where he was not -- but at the time that I listened, he was calm, he was rational, his thought process was intact, he was responsive, he did not manifest in the sound of his voice or in the words that I read and listened to, any evidence of pressure, internal or external, he did not exhibit, as I've said, signs of fatigue, distress, pressure of any kind. I am satisfied that, although it is true that he could have been taken directly to the county jail to be processed, the next morning taken to Margate and then processed and then taken to the county jail and then the next day for the

statement, all of that is true, that doesn't vitiate the issue -- the finding, rather, that the statement that he did make at that time, under those circumstances and in that place, were voluntary and were the result of the knowing and voluntary waiver of his rights not to make any statements or to answer any questions.

With respect to the ankle, I am satisfied that as of noon on Saturday, he did have a problem with his ankle attributable apparently to some procedure that he had undertaken some months before and that was bothering him. He apparently had had a cast on it which he removed during the period of his travels. And that is consistent, I find, by the way, with a statement made in the transcript and that I did listen to where he indicated that he hobbled back to the car right after the shooting.

Be that as it may, I am satisfied that there was a problem with that ankle, the nurse observed it and gave him something for it, but I am satisfied that at no time during the questioning that's the subject of these applications, did he manifest or speak about any particular problem or pain in his ankle that in

any way would have had any impact or did have any impact on the voluntariness of the statements that he made or the waivers that he knowingly and voluntarily made.

For all of those reasons, the application by the State for the admission and use in the State's case in chief of the oral statements made by the defendant to the local officers in South Carolina, of the oral statements made in the Margate Police Department between two and three in the morning, and of the contents and fact of the taped statement between three and four in the morning, -- 2:20 and 3:50, I think I said between two and three. All of those applications are granted. The statements may be adduced by the State.

Other than with respect to exhibits, does that finish us for the day, gentlemen, and are we ready to open to the jury?

MR. TALASNIK: I believe that we are finished with the legal applications that I know of and prepared after a few minutes to mark exhibits.

THE COURT: And once the exhibits are marked, are we ready to open to the jury?

MR. TALASNIK: The State is ready, your Honor.

THE COURT: Once we swear them. Mr. Davis?

MR. DAVIS: I'm ready, Judge.

THE COURT: Okay. Gentlemen, we'll take a five minute recess. Mr. Talasnik, you may have back these exhibits that I used in this hearing. I have returned all exhibits so far to the parties because they are all marked only for identification. I'd like to take whatever time we need this afternoon to mark any additional exhibits, and I don't know, Mr. Davis, but if there are any exhibits that can be stipulated into evidence, we can do that, too.

(Brief recess.)

THE COURT: Mr. Talasnik, we've got S-1 through 12 marked and D-1 through four.

MR. TALASNIK: S-13 is a brown leather jacket.

(Exhibit S-13 was marked for identification.).

MR. TALASNIK: S-14 is a copy of a rental car form dated the 25th of April, 1988.

THE COURT: S-14.

(Exhibit S-14 was marked for identification.)

MR. TALASNIK: S-15 are receipts from the Pier 4 Motel dated April 25, 1988. They are two documents stapled together.

THE COURT: S-15.

(Exhibit S-15 was marked for identification.)

MR. TALASNIK: Next, your Honor, will be a series of photographs.

THE COURT: How many do you have?

MR. TALASNIK: 20.

THE COURT: They will be marked S-16 through 35. And what generally are they, Mr. Talasnik?

MR. TALASNIK: Your Honor, the -- let's see, all -- the first 15 are of the scene, various locations at the scene taken at approximately the time and place of the -- or the evening of the shooting, which would be April 25th, 1988.

The last five are photographs of -- I'm sorry, that would have been the first 16, the last four are photographs that were taken at the autopsy and are of the victim.

THE COURT: Okay.

MR. TALASNIK: I was right the first time, 15 of the scene and five at the autopsy.

THE COURT: All right.

MR. PRESTON: May I inquire whether we'll view the photos before opening statements?

MR. TALASNIK: I don't intend to show any of them in opening, if that's counsel's concern.

MR. PRESTON: Or comment on them. That's the only question I have.

THE COURT: Let me indicate that ... exhibits will be exhibited to the jury during openings by anybody. The jury can't get to see exhibits until they're received into evidence. That's point one.

Point two, with respect to commenting on them, what, Mr. Talasnik, is your intention in that respect?

MR. TALASNIK: I'm afraid I don't understand.

THE COURT: The question is --

MR. TALASNIK: I'm not going to tell the jury they're going to see the picture of a woman with --

THE COURT: End of subject.

MR. TALASNIK: All right.

(Exhibits P-16 through P-35 were marked for identification.)

THE COURT: Mr. Preston?

MR. PRESTON: Sometimes it takes me awhile to focus in on a reaction here. The problem is not just the opening statements, but the problem is the jury seeing or knowing of the existence of photographs which might be objected to and ruled inadmissible, and I guess the real bottom line is that we have a chance to get your Honor's ruling before the jury knows of the existence of any of these photographs.

THE COURT: Well, when you look at the photographs, Mr. Preston -- I've just looked at 16 through 30, and I -- again, you know a lot more about this case than I do, I don't see anything in 16 through 30 that ought to require my intervention at this point.

MR. PRESTON: Judge, from my recollection of the discovery, there may not be a problem, but we haven't seen what Mr. Talasnik is proffering.

THE COURT: Mr. Davis is in the

process of examining them now.

MR. PRESTON: That's all I ask for, Judge.

THE COURT: While you're doing that, Mr. Talasnik, what's 36?

MR. TALASNIK: All right. 36 would be a certified copy of the domestic violence restraining order and original complaint.

THE COURT: Final or temporary?

MR. TALASNIK: The one is the temporary and one is the final.

THE COURT: Those will be marked as S-36 for identification.

(Exhibit S-36 was marked for identification.)

MR. TALASNIK: Next, your Honor, would be a certified copy of indictment 88-04-0834B.

THE COURT: What's that?

MR. TALASNIK: Which is the aggravated assault indictment.

THE COURT: What's the indictment number, please?

MR. TALASNIK: 88-04-0834B.

THE COURT: That's the aggravated

assault?

MR. TALASNIK: Yes, your Honor.

THE COURT: S-37 for identification.

(Exhibit S-37 was marked for identification.)

THE COURT: All right. 38?

MR. TALASNIK: Is a manila envelope containing seven smaller manila envelopes and labled ballistics with a date, 4/26/88. They are lead fragments and the bullet and shell casing removed from the victim's body.

THE COURT: S-38.

(Exhibit S-38 was marked for identification.)

THE COURT: Next?

MR. TALASNIK: Next, your Honor, would be a two page ballistics report from Sergeant John Hannigan dated April 26th, 1988.

THE COURT: S-39.

(Exhibit S-39 was marked for identification.)

MR. TALASNIK: Next, your Honor, would be two items that were taken from the same source, one is a folded copy of the restraining order that was referred to in an earlier exhibit,

and the other is the parking identification permit belonging to the victim, Gloria Simonelli.

The reason I'm offering them together is that they were both removed from the same location.

THE COURT: Well, the parking permit will be marked S-40. What was the location from which they were removed?

MR. TALASNIK: The victim's clothing.

THE COURT: And S-41 will be a folded copy of what otherwise appears as S-36 taken from the victim.

MR. TALASNIK: That's correct, your Honor.

(Exhibits S-40 and S-41 were marked for identification.)

MR. TALASNIK: Next, your Honor, is a gray envelope addressed to a Mr. Rick Simonelli.

THE COURT: That's S-42.

THE COURT: Is there anything in the envelope?

MR. TALASNIK: Yes, your Honor, there's an overdue notice.

THE COURT: Okay.

(Exhibit S-42 was marked for

identification.)

MR. TALASNIK: Next, your Honor, is a trip ticket that has Fairmont Hotels on it and contains materials relating to that hotel and some receipts.

THE COURT: Dates?

MR. TALASNIK: October 1988, November 19 -- November 8th through November 11th, 1988.

THE COURT: November of '88?

MR. TALASNIK: No, that has to be a misprint. It must be '87. Let me look again. No. I'm sorry, it's '87. November 8th through November 11th, 1987.

THE COURT: S-43.

(Exhibit S-43 was marked for identification.)

THE COURT: Anything else?

MR. TALASNIK: This is out of order, your Honor, but this is the original of the assault complaint dated March 16th, 1988.

THE COURT: That underlying the indictment?

MR. TALASNIK: Yes, your Honor.

THE COUPT: S-44. What's the date on it?

MR. TALASNIK: March 16, 1988.

THE COURT: Charging him with assaulting her?

MR. TALASNIK: Yes, your Honor.

(Exhibit S-44 was marked for identification.)

MR. TALASNIK: The summons number is S-900015.

THE COURT: Okay.

MR. TALASNIK: As best I can determine, your Honor, that, along with the matters marked for identification during the various Miranda hearings and the Sands hearing, would constitute the exhibits.

THE COURT: All right.

MR. TALASNIK: If I come up with others between now and Monday, I'll advise the Court and defense counsel and get them marked.

THE COURT: Have you gotten them all back except for the pictures?

MR. DAVIS: We have one here, Judge.

THE COURT: Before you leave today, Mr. Talasnik should have all of his exhibits. I'm not keeping any because nothing is in evidence yet. Mr. Davis, are you aware at this point,

other than the four you've already got marked, that you'd like to have marked now?

MR. DAVIS: No, Judge.

THE COURT: Okay. Now, Mr. Preston, have you had a chance to look through 16 through 35?

MR. PRESTON: I have, Judge, and I inform the Court that at this time we believe that there are problems with a couple of the autopsy photographs and that we think that -- we request a Rule 8 hearing.

THE COURT: Which photographs?

MR. PRESTON: The photographs that are marked S-34 and S-33 are the ones.

THE COURT: Put them face down right here. Now, there are three others, 31, 32, and 35. Are you suggesting to me that, subject to proper authentication and relevance, that they don't pose the same type problem?

MR. DAVIS: That's correct, Judge.

THE COURT: So you perceive these to be a Rule 4 type issue?

MR. DAVIS: The two you have here?

THE COURT: Yes.

MR. DAVIS: Yes.

THE COURT: State wants to proceed with all five?

MR. TALASNIK: Well, yes, your Honor. Although it's my understanding that all we were doing is marking these items for identification, that the time to deal with whether they are admissible into evidence and whether they can be shown to the jury is after there has been testimony about them so that the Court can make a decision about relevance and probative value, rather than doing it up front in a vacuum based on my representations.

MR. PRESTON: We're not talking about the substantive material, we're talking about --

THE COURT: He concedes, subject to proper authentication, the relevance. His argument is, I assume -- I have not seen the pictures, any of them -- I assume the argument is that they are sufficiently graphic so that under Rule 4 to create undue risk of prejudice which outweighs their probative value. That is, as I understand it, the position he's taking, is that correct?

MR. PRESTON: That's correct, Judge. There may be other photographs that will

substantiate or be suitable for Mr. Talasnik's purposes that do not involve the same problems that these particular photographs, or he may be able to suitably print the evidence in a different way to overcome that problem.

THE COURT: I don't know that suitably is the standard.

MR. PRESTON: Suitable to him, let me put it that way.

THE COURT: Mr. Talasnik, you have the three to which this objection has not been raised?

MR. TALASNIK: I have the three to which objections have not been raised. I also have three that I self-censored, since I had --

THE COURT: I certainly don't want to see the ones you self-censored. Bring me, please, the three for which the issue is not raised; that is to say, S-31, 32 and 35. Okay. What else do we need to discuss?

MR. PRESTON: That's our only concern right now, Judge, is that the jury not be aware of those particular photographs until your Honor has had a chance to make a thorough ruling on them. I believe there is one point about the photographs

which sums up our position and that is there is an implement driven through the wound. If it was just the wounds, probably, and there were not other attendant features to the photograph, that might be a totally different story.

I can surmise what the relevance would be, but I suggest that that being done through the picture displayed in that manner, is a little revolting and would certainly be a problem for the jury. In the autopsy -- if the doctor wants to testify about it or something like that, there are certainly other ways of proving what Mr. Talasnik wishes to prove. I just think that that's a little repulsive to me.

THE COURT: Well, okay. I understand the principle, having examined the pictures. I have examined all five of them. I'm not sure at this point that my level or your level, or anybody else's particular level of what constitutes repulsive is the appropriate standard. The two pictures in question are graphic, bloody and in color and exhibit the nature and location of the wounds.

It is not possible for me now to make a proper Rule 4 evaluation, principally because I

don't yet know the extent of their relevance. I can, as an individual human being, make some type of guesstimate as to their capacity for prejudice because they are bloody and graphic. But that's not the -- I don't have to decide whether they have a capacity for prejudice, I have to decide whether they have a capacity for undue prejudice that substantially outweighs any probative value. My problem right now is I have no context in which to gauge probative value.

To the extent that the pictures are two of a sequence that were taken in the autopsy they may be properly the subject of appropriate foundation questions to establish what they are and what they generically purport to represent. Whether they may be exhibited to the jury; that is to say, whether they may be admitted into evidence, or whether detailed testimony about what they purport to show may be offered, is a subject that I will address when I have a context in which to address it.

Until I address it -- well, they can't be exhibited until I address it, that's easy, and no specific testimony about what those two pictures purport to describe or depict may be

elicited till we discuss it again.

MR. PRESTON: We will attempt to see if there's a resolution that can be amicably worked out with Mr. Talasnik.

THE COURT: That's fine. I encourage that, but I will, if I have to, make the rulings on those two pictures when I have to and when I can. I will need to know, Mr. Talasnik, obviously before I do so, why, or what is the particular relevance in the case to that which is depicted in those two pictures. Some things are evident to me, some things are not.

That's a terrific way to end the afternoon. Anything else that I need to know?

Well, I appreciate everything. You gentlemen have done a highly professional and excellent job in getting this matter ready to start. We will start it on Monday at 9:30 and we will start it with the swearing in of the jury and with the opening remarks by me, following which I will invite you to make your opening remarks to the jury and you may present your first witness, Mr. Talasnik.

Mr. Preston, it's my understanding that you'll be present in that location throughout

this phase of the trial?

MR. PRESTON: Correct, Judge.

THE COURT: Okay. The record will simply reflect that we've had ongoing discussions informally, almost daily, with respect to some of the more interesting aspects of the problems relating to the instructions to be given at the end of the penalty phase, if we get there. We will take the appropriate opportunity when we need to to have all of these discussions that need to be of record, particularly since I'm going to have to resolve them at some point, but there has been ongoing informal dialogue, and counsel and the Court have exchanged informal points of view with citations and arguments.

MR. PRESTON: Judge, I have -- or will have tomorrow, suitable period of time to work on that very issue, and I was wondering if there was an additional item that the Court had or rough draft that the Court had prepared.

THE COURT: Yes and no. I have, and you can get before you leave this afternoon, my latest version of the penalty phase verdict sheet. Unfortunately, the only changes you will find in it are --

MR. PRESTON: Do not reflect our latest discussion?

THE COURT: Do not reflect any substantive discussions. The only change from the ones you have are -- there's a word I'm trying to think of -- technique or -- there's no substance to the changes.

MR. PRESTON: Stylistic.

THE COURT: Thank you, that's very good. There's some stylistic changes that won't further the discussion very far. You should certainly -- now that I think about it, stop and I'll give you copies of that before I go. It's not very difficult. The main substantive area which is in the issue of aggravating but no mitigating factors, I haven't made any textural changes yet because I haven't figured out what to take off the last version that you have, which is not necessarily the last version you will get.

All right. We'll be in recess.

(Whereupon the proceedings adjourned.)

C E R T I F I C A T E

I, CONSTANCE S. KENT, a Certified Shorthand Reporter of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes of the within proceedings, to the best of my ability.

Constance S. Kent, CSR

CONSTANCE S. KENT, C.S.R.
CERTIFICATE NO. XI01183

DATED: October 4, 1989

A-59-89T4

Part I
pgs. 1-118

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION-ATLANTIC COUNTY
INDICTMENT NOS. 88-06-1443, 87-02-0325
87-02-0223, 86-03-0590

STATE OF NEW JERSEY :
:
vs. : TRANSCRIPT OF
:
RICHARD HIGHLANDER : PROCEEDINGS
:

RECD
APPELLATE DIVISION
JUL 11 1990
Clerk
FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

Atlantic County Courthouse
Mays Landing, New Jersey
Monday, June 12, 1989

BEFORE: STEVEN P. PERSKIE, J.S.C.

ORDERED BY: JAMES JUKES,
Assistant Public Defender

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

MURRAY TALASNIK, Assistant Prosecutor
On Behalf of the State

NATHAN DAVIS, Assistant Public Defender
and
MICHAEL PRESTON, Assistant Public Defender
On Behalf of the Defendant

Reported by: Konstantin Koletas, CSR
Atlantic County Courthouse
Mays Landing, New Jersey

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P R O C E E D I N G S

THE COURT: Gentlemen, good morning. Anything needs my attention?

MR. PRESTON: Before opening statements, I have an application to make. As a result of a pretrial discussion that we had last week, several aspect of this case came together in a new light over the weekend.

THE COURT: That's the theory of pretrial proceedings, Mr. Preston.

MR. PRESTON: And I take this first opportunity that I have to raise this matter.

Early on in the case we made a motion to bar the death penalty and the constitutionality penalty of the case based on arbitrary and capricious acts of the prosecutor. That motion was heard, the Court denied it. As part of that motion, there was also a State versus Smith aspect in the sense that we compared this case to a number of other capital cases or death eligible cases and that aspect was also included in your

Honor's ruling, I believe.

At this particular point, there is another added factor that has come together and I wish to renew that motion, specifically addressing this additional factor and would ask your Honor not only to consider this factor, but also as it falls in and applies to and combines with the very State versus Smith comparisons we brought up earlier.

The situation is simply this. The proffer of fact that we were prepared to make and the legal argument is as follows:

This case was indicted for murder rather than for manslaughter or aggravated manslaughter, given all of its facts as your Honor has partially seen so far and will see in the trial. It was also served a notice of aggravating factors and, in effect, the prosecutor's decision along this line elected to seek an indictment for murder rather than for any other manslaughter counts. It elected to serve a notice of aggravating

factors and its selection was made towards one end, to make this a death case.

What we have, however, is a situation in which the prosecutor has provided us in discovery and has made numerous statements that Mr. Highlander has threatened the prosecutor of this county, has made threats against various members of his staff on a number of occasions, and we are prepared to set this in a evidentuary hearing which we would request, and in light of all that, comparing the case as it is, we suggest to the Court that its status as a death case is questionable as best, that the prosecutor's decision is suspect for improper factors, to say the very least, and that in a situation like this, we would have expected during the normal case, I think both the Court and the defense counsel would have expected that this matter would have been handled by the attorney general's office as a neutral party.

It was not and the question is why wasn't it?

I turn now to a witness in this case, Mr. Chambers. Your Honor has already heard certain facts concerning Mr. Chambers' involvement in this case.

THE COURT: Not that I know of.

MR. PRESTON: I believe that there were some questions asked in prior proceedings concerning Mr. Chambers driving a car.

THE COURT: Is that his name?

MR. PRESTON: His knowledge of certain events.

THE COURT: I never knew the name, sorry.

MR. PRESTON: And the presence of the gun and the knowledge of the presence of the gun.

THE COURT: I know who you are talking about, I just didn't know his name.

MR. PRESTON: The question also comes up why there were no charges filed against Mr. Chambers, despite all

indications that Mr. Chambers certainly might stand to be charged.

Our pretrial conferences raised that issue as to whether Mr. Chambers should have a lawyer before he answers any questions. That particular point drove home forcefully to me just the situation that Mr. Chambers is in. But again, further reflection drove home the situation that the prosecutor's office is not charging him. Why at this point we have no notice and I see no evidence of a grant of immunity to Mr. Chambers for his testimony? But if Mr. Chambers were to be granted immunity, that immunity would have to come from the attorney general's office, the very person to whom this case was not assigned, given the conflicting situations that I raised earlier in my statement.

All of this seems to the defense at this time to put the prosecution of this case on a very questionable footing, that a number of decisions have been made by the prosecutor's office that are highly

unusual, to say the very least. They involve purely discretionary calls and yet they exist in a situation that I suggest is tainted with the self-interest of the prosecutor's office.

Now, I have no grounds, no information, nothing on which to believe that Mr. Talasnik in this case has taken part in any of these discretionary decisions. As a matter of fact, the information that I have is, I would believe, is that it is hoped by the prosecutor's office that Mr. Talasnik is far enough removed to deflect any criticism.

THE COURT: Removed from what?

MR. PRESTON: From the decision-making process. It seems that any decision as to -- any discretionary decision in this case as to major steps, major charging factors was not Mr. Talasnik's bailiwick, was referred from the prosecutor's office, but Mr. Talasnik is here trying the case. He is the shield --

THE COURT: He carries a whole lot of names before assistant prosecutor. He's in the management of the prosecutor's office, is he not?

MR. PRESTON: He is, Judge, and the question that I think your Honor may fairly --

THE COURT: Deputy First, is that it?

MR. TALASNIK: Yes, your Honor.

MR. PRESTON: The question your Honor may also look at it is despite the titles, sometimes we don't have all of the authority on our own, discretionary authority that those titles might seem to convey and in major steps, approvals are always sought higher up. This is probably more true of the prosecutor's office and the attorney general's office as it may be from the public defender's office.

THE COURT: Or the Court.

MR. PRESTON: But that is the situation we are in.

THE COURT: Okay.

MR. PRESTON: We would ask that the Court hear our motion and receive our proofs at a Rule 8 hearing. I can -- if the Court would not allow us a Rule 8 hearing, I am prepared to assemble our proffers at least in some written form and would wish to do that.

THE COURT: Mr. Talasnik, do you desire to be heard?

MR. TALASNIK: Your Honor, perhaps rather than simply address the application, if the Court has any questions the Court wishes to address to me or if the Court does not, I am prepared to just briefly address the application.

THE COURT: You may address it.

MR. TALASNIK: Very well, your Honor. Your Honor heard him months ago on various challenges to the indictment, to the application of the death penalty, to this matter based on various constitutional grounds which included a challenge dealing with proportionality and how -- and whether there was any

evidence of an abusive discretion by the prosecutor's office. There has been no new evidence that has been supplied to the defense that should authorize a renewal of that application today.

The discovery materials which have been in the hands of the defense for close to a year now includes the fact that in one of the interviews granted by the defendant to the FBI, that he -- that the defendant allegedly issued some dissatisfaction with prosecutability and indicated an intent to harm Mr. Blitz and some satisfaction that at least he was able to get out of the State of New Jersey without being arrested by Mr. Blitz.

So there is nothing really new there and no other evidence has come to light regarding any threats against any other members of the local prosecutor's office or law enforcement agency that has touched upon this investigation. Nor is there any really new evidence with respect to Mr. Chambers' status, a sworn

trans -- transcript of a sworn statement appeared in discovery very early on detailing Mr. Chambers' involvement. The fact that Mr. Chambers has not been charged nor has been granted any specific immunity has been known to the defense for some time and so there is really nothing new there that could not have been earlier addressed.

THE COURT: Is there any agreement of any type, formal or informal, with Mr. Chambers and your office?

MR. TALASNIK: At this point there is not, your Honor.

THE COURT: Does Mr. Chamber have counsel?

MR. TALASNIK: He does not have counsel. He is subpoenaed as a witness and he has been advised that your Honor will intend to address him as to his rights and whether he seeks to have counsel.

THE COURT: The record will reflect a discussion we must have had off the record last week in which I indicated to

all counsel that if Mr. Chambers was going to be called to testify that I would want to be satisfied before he testified before the jury that he understood whatever his rights to remain silent might be. I, at this point, don't know what they are. But it strikes me just on the basis of the limited things that I know, which appear of record in this matter, that the issue is obviously ripe for discussion and that he will not be called to testify before the jury until I'm satisfied as to the ramifications.

MR. TALASNIK: I understand that and that has been explained to Mr. Chambers.

THE COURT: Okay.

MR. TALASNIK: Additionally, there was never any challenges to the appropriateness of the grand jury presentment as to whether there was any improper evidence presented or any improper influence visited upon the grand jurors at the time they made their decision to charge in the count,

principal count of the indictment, knowing and purposeful murder by the defendant's own conduct nor has there been any sort of McGreary challenges addressing the basis of the evidence to support the two aggravating factors that are named in the complaint.

Under those circumstances, I fail to see how anything new has been presented that should cause this Court to reconsider motions that your Honor has already heard and denied.

THE COURT: All right.

MR. PRESTON: If I may, there is one thing the prosecutor mentioned about nothing new, that I would say that one of the proffers we are prepared to make is that one of the assistant prosecutors, who was involved in a prior matter, was given protective guards as a result of Mr. Highlander's arrest and that has come to our attention in the meantime.

Now, I just offer that for the record and that is one of the matters that we would proffer.

THE COURT: My recollection, Mr. Preston, is that I denied the motion the last time as it was unlikely without prejudice. Isn't that what I said?

MR. PRESTON: Yes, that's correct, Judge. There were several aspects to the motion. One was a general challenge and one was a specific challenge, the Smith aspect, State versus Smith aspect, and we raised this in connection with the State versus Smith, not as a general challenge to the statute, but as a challenge to this specific prosecution.

THE COURT: Didn't I say that I believe it was untimely until there was a sentence that would implicate the provisions of the statute?

MR. PRESTON: You did, Judge, and that is why I also mentioned the discretion in this case not only involves the aspects of the prosecution which elevates murder to capital murder, but also involves a discretion to charge murder as opposed to aggravated assault and deals specifically with the penalty

phase. In that respect, even given your Honor's ruling, I would have to raise this issue now.

THE COURT: I still think it is untimely and the motion is dismissed without prejudice. I will entertain it in the event of a final judgement that implicates any of it. When I entertain it, it will be on notice with a formal and complete proffer by the defense as to what it is I am expected to address factually.

Anything else?

Mr. Davis.

MR. DAVIS: Yes, your Honor. I would move for sequestration order pertaining to all witnesses.

THE COURT: Mr. Talasnik?

MR. TALASNIK: I have no objection to the application and would request that it be reciprocal and applied to defense witnesses as well, subject to one application that I would make for an exception and I will make that application now.

One of the subpoenaed State's witnesses in this matter is John Simonelli, who is the father of the deceased Gloria Simonelli. It is expected that John Simonelli will testify as a State's witness in the guilty phase of the trial.

THE COURT: First phase?

MR. TALASNIK: First phase of the trial. The State's application is that upon the completion of Mr. Simonelli's testimony, that he be permitted to remain in the courtroom to observe the balance of the trial. I have explained to Mr. Simonelli that in making this application, he must understand that the State gives up the right to recall Mr. Simonelli for any reason in either phase or in any phase of the trial.

Mr. Simonelli also understands that should the Court grant the application and in any event, whether he is present or not, that he would be foreclosed from any conversation of any substantive nature with any of the witnesses who have

been subpoenaed by the State or by the defense.

These are unusual circumstances. The father of the deceased wants to see --

THE COURT: I don't understand your application. I understand that after a witness who has been sequestered has testified and is not going to be recalled, the sequestration does not apply to such a witness any way.

MR. TALASNIK: I had a certain amount of timidity in making that assumption. Therefore, I make the application before the Court.

THE COURT: It is my understanding that the thrust of the sequestration is to preclude any witness from being in the courtroom and listening to any testimony before that witness has testified or testified fully. Further, that the terms of the sequestration order preclude such a person from discussing the substance of any testimony that person offers with any person before the testimony is concluded.

That is my own understanding of the sequestration order.

Do you have a different understanding?

MR. TALASNIK: Well, that would satisfy us.

MR. DAVIS: No.

THE COURT: It is so ordered. All witnesses in the matter are sequestered in accordance with that.

MR. TALASNIK: The only other question I have is merely a matter of logistics. The State's witnesses as they arrived are being kept in the basement offices of the court building. There is apparently no longer a phone up here that permits us to call down to have the witnesses brought up. I would request that your Honor grant just a couple minute recess between the close of opening statements and the necessity of calling the first witness so that the first couple of witnesses could be brought upstairs.

THE COURT: Well, as a practical

matter, it will happen that way anyway. There is a phone here, which if needed we could use, it is right here, but given that I am going to make instructions to the jury before your opening statements, I suspect that we will probably be taking the morning recess about then anyway. I don't think it is a problem this morning.

MR. TALASNIK: Very well, your Honor. The State has no other applications. However, as I indicated to the Court on Thursday, I made every effort to have exhibits marked for identification. I neglected two. I have shown them to defense counsel and I have two other items to be marked for identification.

THE COURT: S-45 and S-46. What are they?

MR. TALASNIK: Two photographs, one each of the victim Gloria Simonelli.

THE COURT: Two photographs of her?

MR. TALASNIK: Yes.

THE COURT: Okay. Let me see them.

Photographs were marked apparently

by Judge Previti as 1 and 2. One will be marked S-45 and the other as S-46.

(Above-described photographs marked Exhibit Nos. S-45 and S-46 for identification)

THE COURT: Anything further?

MR. TALASNIK: Nothing, your Honor.

THE COURT: Mr. Davis?

MR. DAVIS: Nothing, your Honor.

THE COURT: Ladies and gentlemen, the trial is about to start. For those of you who will be attending with any regularity, I do wish to inform you of the general courtroom etiquette. Your attendance as members of the public is permitted and welcomed and you are free to be here for any or all of the proceedings in the matter. There are, however, certain basic requirements upon which I will insist and with respect to which I will tolerate no variation. During the period of time that the jury is in the courtroom, but in any event when the court is in session, there is to be no conversation. At no time whether

the jury is in the courtroom or not is there to be any reaction visible or audible by any member of the audience with respect to anything that takes place.

By reaction, I mean either comment or facial expression or nodding or shaking the head or any other visible or audible reaction to anything that is said or done.

Lastly, there is to be no entering or leaving the courtroom when the jury is doing so and you should keep in mind that generally after the jury recesses, there is usually a few more minutes or some time when the Court is still in session. You will be notified, of course, when the Court is not in session and at that time you are free to enter and leave when you see fit.

Anything further?

MR. TALASNIK: No.

MR. DAVIS: No.

THE COURT: Sheriff.

(Jury enters the courtroom)

(Jury sworn)

THE COURT: Ladies and gentlemen, good morning.

Let me first tell you about this courtroom. It will usually be too cold first thing in the morning and too hot last thing in the afternoon. During the course of the day we ebb and flow back and forth, so you can sort of get used to that kind of notion. If any of you are a little chilly now, just wait until this afternoon and it will get a little better. Hopefully during most of the day we are about where we need to be.

I want to take a couple of minutes this morning to share with you some of the information that you didn't get to see or hear last week when you first got here. We usually have a film, about a 20-minute film in which my predessesor stars and in that film the jury panel is generally given some basic information about the conduct of the trials that we do here in this courthouse.

I want to touch base with most of

that detail now briefly for you to give you a general overview of some of the words and some of the concepts you will see and hear during the course of this trial. Then I will discuss very briefly with you something of what this case is about from a legal point of view. That is to say, to describe for you in a little bit of detail what the charges in this case are. When I have completed that process, I will invite counsel to speak with you and you will hear from the prosecutor and defense counsel with respect to what this case is about and what they anticipate you are going to be hearing during the course of this trial.

That's our immediate agenda after which we will turn to the business of hearing testimony.

Let me start by reminding you that our procedure, the trial of a criminal case starts with a document that is known as an indictment. An indictment is not any proof or evidence of guilt of a person. An indictment is a formal legal

word for a charge or group of charges brought against somebody by a grand jury. The grand jury will typically hear evidence suggesting that somebody has committed a crime and what that crime is. If the grand jury is satisfied that there is sufficient evidence to charge the person, they return an indictment. An indictment informs the defendant and it informs the judge who will be trying the case and it informs the jury of exactly what the charges are. And in a few minutes I will discuss the content of this indictment with you.

You should keep in mind that under our system, when a person is charged or indicted for a crime, our law provides that that person is presumed to be innocent until proven guilty of the charges in the indictment, some of them or all of them, and that that proof must be beyond a reasonble doubt, a term I will explain during the course of the trial for you.

The burden of proving somebody's

guilt is on the State. A defendant is never obliged to prove his innocence. The State has the burden of proof in a case. It starts with the State and it continues with the State throughout the entire trial of the case and even into your deliberations. Unless after your review of all of the evidence you are satisfied that the defendant has been proven guilty beyond a reasonble doubt, he is presumed to be innocent.

During the course in the life of a criminal case, it starts with the indictment and then eventually gets to trial as we are here today. In between the time of the indictment and the time of the trial, there are a number of what are called pretrial procedures. Essentially what that involves is the exchange of information between the State and the defendant. Those of you who are familiar with television shows Perry Mason or even some of the more recent ones have perhaps some view of how the process works. Unfortunately, television

and the movies emphasize drama and not necessarily accuracy. The notion of the surprise witness that walks into the courtroom unbeknownst to anyone and drops a name or makes a confession on the stand is terrific television, but not real life.

In real life, before the trial starts, the lawyers have exchanged a great deal of information and essentially they know who the witnesses are going to be and essentially they know by and large what it is that the witnesses are going to say. During the course of the trial, you may hear reference to some of that exchange of information. It is called by a number of names, the most common of which is discovery.

In the course of the discovery process, the State supplies the defendant with a copy of police reports or copies of statements or photographs or other exhibits and the defense will occasionally provide copies of similar material to the State.

During the course of the trial, you may see witnesses examined or cross-examined on the basis of some of this material. I tell it to you now simply so you will understand what that kind of material is if you see it referred to during the course of the trial.

The commencement of the trial, which we will see this morning starts with what are called opening statements. In the opening statements by the attorneys, you will hear an outline of what they expect you will see and hear during the course of the trial with respect to evidence. You must keep in mind as you listen to the remarks by the attorneys, they are going to tell you what they think the evidence will be. Obviously, the attorneys in this case are not witnesses, they are not going to be testifying under oath, they were not present when any of the events in the trial happened and, therefore, of course, you can't base your verdict in the case on anything that the

lawyers tell you the evidence will be.

Their remarks are helpful because they will give you a road map or overview of what it is you will hear so you will have some understanding of what you should hear and why you are going to hear it. But you must keep in mind at all times throughout the entire trial of the case, and you will hear me say this many times, that your verdict in the case must be based solely and exclusively on the testimony that you see and hear in the courtroom from the witnesses and upon your examination of any exhibits or documents or photographs or other evidence that I admit into evidence during the course of the trial.

After opening statements are made by the attorneys, the State then has the obligation of presenting its proof or its evidence in connection with the charges in the indictment. In order to do that, the State will be calling witnesses to testify. When a witness is called, the witness will be placed under oath and

will be asked questions by the prosecutor. This is called direct examination. During the course of direct examination, the prosecutor will elicit or obtain from the witness evidence that the prosecutor wishes the jury to hear. When the prosecutor has completed the direct examination of any witness, the defense has the right to cross-examine that witness; that is, to ask questions, additional questions of that witness again for the purpose of drawing certain facts to the jury's attention.

When the examination of that witness has been completed by direct and by cross and by any follow-up -- generally after cross-examination the prosecutor has a right to follow up and then the defense has a right to follow up -- when both sides have completed the questioning of that witness, the witness is excused and the next witness is called and the same process follows with respect to each witness.

During the course of the examination

of any witness, there may come and there will come opportunities that I will have to make legal decisions, whether a question is proper, whether certain kinds of evidence may be presented to you. Some of these issues we have already resolved in advance. That's what we were doing last week after we excused you on Wednesday. Some of them we will not be able to resolve until they actually happen, in part because we don't know what they will be in advance and because partly they won't be timely until they come up.

Sometimes I will be able to resolve those questions immediately as we go along. Somebody will ask a question, the other side will object, I will rule on the objection, you will hear the whole thing and we will proceed. I will either sustain the objection, meaning the question can't be asked or can't be answered or I will overrule the objection meaning the question was okay and the witness can answer it.

You should understand you are to attach no significance, don't try to keep score for who is ahead on objections. Both sides have not only the right but the obligation to make objections from time to time. Sometimes I will sustain their objections and sometimes I will overrule them. It makes no difference as to whether they have a right to do it. You should not attach any significance either to the frequency of any objection or to the results.

Sometimes the nature of the objection will require me to ask a couple of questions of the lawyers or to have them make some comments to me in support of what their position is on that objection.

For the most part, when that happens, I will ask the lawyers to come over here to the side of the bench and we will have a whispered conversation that theoretically you don't hear and if we do it right, you won't hear it.

There are a couple of reasons we do

that. In the first place, it is likely to be sufficiently short, usually less than a minute, so to have you go out of the courtroom and wait and then come back in is an unnecessary imposition on you. We can dispose of it quickly right here. But I don't want you to think that that process is designed to keep secrets from you. The fact is that, for example, in articulating the reason why an objection should be made or should be overruled one way or the other, frequently to articulate that destorys the purpose of the objection. Perhaps the lawyer feels there is something improper about that question, but if he articulates in front of you what his objection is, his concern would be rendered moot because you will hear what his problem is to begin with or some other reason. The purpose is not to keep secrets, but a matter that I have to make a legal decision that doesn't directly involve your decision and ability to decide the facts.

Keep in mind that during the entire

trial, your role and mine are very separate. We work together, you and I, but we each have our own distinct responsibility. My responsibility during the course of the trial is to decide all of the legal questions, to decide what is proper evidence and what is not, to make sure that the trial is conducted in accordance with the law and in accordance with our rules.

At the end of the trial, I will explain the law that applies to this case to you and you will have an obligation, as I will explain it at that time, to accept that law and to apply it in this case, whether you choose to agree with it or not.

Your role on the other hand is to decide this case and decide what the facts are and to decide among other things who you believe and what's important. Nothing that I say at any time during the trial starting right now should in any way be interpreted by you as interfering with your

responsibilities. In other words, you can't interfere with my authority and I can't interfere with yours. We each have very separate areas of responsibility.

So, anyway, back to that, that's what you call the side bar conference. On occasion when we can do it quickly, they will ask to come up or I will invite them and we will have a whispered conversation, as a result of which I will make some ruling and the trial will then proceed. If I can't do it real quickly while we are standing there and if I can't do it in 30 seconds or a minute or so when they are here in a whispered conversation, I may need to excuse you for a couple of minutes. Maybe we need some lengthy argument. Maybe I need to hear some testimony about the question so I can decide whether you can hear any testimony about the question. When that happens, I will ask you to be excused. That will be a brief recess and we will try to do that as few times as possible, but whenever it has to happen, it has to

happen.

Keep in mind that the best plans of lawyers and judges often get loused up by turns in a case that we can't anticipate.

One of the most interesting aspects in being involved in trials is that it is not all cut and dried, that there are frequently things that come up that you do not anticipate. It sometimes makes it a little annoying when it louses up the schedule, but it does make on occasion for a more interesting trial.

So that is what that process is about. When you are excused, again, please don't think we are trying to keep secrets. It is my responsibility to see to it that not only that you know everything that you need to know, but also that you don't hear anything that would be improper for you to hear. That's essentially the kind of role that I am playing.

Now, during the course of the trial you will see a number of exhibits, many of them we have already marked, so we

have saved some time with respect to that and when you see an exhibit that is marked S-32 or D-4 or whatever it is, that's because we took some time last week to get all of the exhibits or most of the exhibits marked already.

Some of the witnesses will be shown particular exhibits, whether they are documents or reports or statements or photographs or whatever, and they may give testimony from some of those exhibits. At certain points during the trial, one lawyer or the other will ask me to admit certain exhibits into evidence. And some of the exhibits will, in fact, be admitted into evidence. When an exhibit is admitted into evidence, it means that it is something specific that the jury will be able to see and touch at the end of the case. You will have all of the exhibits during the course of the trial that are admitted into evidence sent into the jury room with you at the end of the case for your examination. And during the course of the trial, if an

exhibit is admitted into evidence, it may be appropriate to have you examine it right then and there and we will pause in the trial for that purpose.

You should keep in mind that not all exhibits you will see during the course of the trial referred to by the witnesses will necessarily be admitted into evidence. Some will and some will not. Those that are not have been decided by the lawyers or by me as not appropriate for you to consider or not necessary for you to consider, even though you have heard some evidence about them during the course of the trial.

During the trial, I will let you know on a daily basis exactly what exhibits have been received into evidence and that therefore you may expect to see at the end of the case.

After the State has completed its presentation of evidence in the form of calling witnesses and introducing whatever exhibits they may choose or seek to introduce, the defendant then has the

opportunity to present any evidence that he chooses to present.

You should keep in mind, as I mentioned to you earlier, that a defendant never is obligated to prove anything or to prove innocence. The State has the entire burden of proof in a case. But a defendant has the right, if he chooses, to present any evidence to you in the form of witnesses or exhibits, the same as the State, that he thinks are appropriate to do. So after the State has completed its presentation of evidence, the defendant has the opportunity, if he chooses to, to present any evidence and it is presented the same way. The defendant calls certain witnesses, he by direct examination presents certain testimony to you, after which the State has the opportunity to cross-examine those witnesses and the process is exactly the same except in review.

At the end of the presentation of all of the witnesses in the case and at

the end of the introduction of all of the exhibits or documents that may be introduced into evidence, it is then time for what are called final statements or closing arguments by the lawyers. At that time, the lawyers will speak to you again and they will suggest to you what they think you should decide about the case. What you should decide as being the important evidence, what you should decide as being the believable evidence, the conclusions that you should draw on the basis of what you have heard. You must, of course, keep in mind that that part of the trial, as I will remind you then, that again the remarks by the lawyers that you will hear at that time are helpful because they will help you to shape your own thinking, but you can't allow what the lawyers think necessarily to be what you think. You must make your own decisions on the basis of what you recall the evidence to be.

After the lawyers have completed their closing arguments to you and given

you suggestions about the conclusions they think you should draw, I will then make a final statement to you that explains the law that governs the particular charges that will be submitted to you for your decision.

I will outline with specificity exactly what charges are present in the case at that time and exactly what questions you will have to answer and exactly what principles of law will govern your deliberations.

Keep in mind now, as I will tell you then, that at no time will I seek to tell you how to decide the case. That is not my authority nor is it my responsibility or my intention.

After I have presented to you the final statement of the law, it will then be your responsibility to deliberate on the case and I will give you detailed instructions about that at the time.

One comment I will make to you now, and it is frankly the one if any of you were wondering I was trying to think of

the other day, I told you I would think about it after you left and about five minutes later I did and it is this. As you already know, there are 16 of you here this morning. Hopefully, obviously, each of the 16 of you will be able to be present during all day, every day until the trial is done. The trial, however, will complete with 12 jurors to deliberate. We select 16 jurors at the outset, all of whom participate in the entire trial to prevent against any unforeseen disaster or emergency, somebody gets sick, somebody has an emergent problem or something of that nature, during the course of a trial, it may become necessary, even if we don't want to do it, we may have to excuse one or more of you. In order to guarantee we finish with 12, we start with 16. If, at the end of the trial, when it is time to deliberate we have more than 12 jurors here, whether we have 13, 14, 15 or 16, we will at that time select any alternates, whether there would be one,

two, three or four alternates, depending on how many people are here.

That selection is done by lot; that is, your names are put in the wheel and the names of the alternates are selected out. We do not know in advance and you do not know in advance who the alternates will be. It therefore is imperative, obviously, that each of you assume that you will be, in fact, one of the jurors who will deliberate in the case and therefore you must each day pay careful attention to everything so that when you are winding up deliberating or not, you are prepared to do so and we will not, as I have said, select the alternates until the very end of the case. It is the last thing we do before we send the matter in to you.

Just a couple of words about your general responsibilities as a jury during the course of the trial. I have mentioned to you that your role is to decide this case, to decide what happened, to decide what the facts are,

to decide what the important evidence is and to decide what you believe.

Let me give you, if I may, a couple of general guidelines with respect to that because you don't need in making those decisions no greater powers and no greater knowledge than your ability as I told you last week to be patient and to listen, to apply your common sense and to apply your every day experiences as citizens and as people. You will be listening to a number of different witnesses.

One of the principles, if not the principle responsibility that you will have, is to listen to those witnesses, to watch them as they testify, to decide which witnesses you believe or which part of the testimony of which witness you believe and which you do not, to decide which of the testimony you think is important and helps you to reach a decision and which of the testimony you feel is relatively unimportant and doesn't assist you very much or at all.

In that regard, you should pay careful attention not only to what the witnesses say, but to how they say it. You may watch their demeanor or their behavior as they testify. Many times you can get a lot from how somebody appears or how they act as much as by what they say. You should give some consideration to whether what they say makes sense. Did it sound believeable? Does it have the ring of truth about it? For any witnesses that tell you that they saw something or that they heard something, did they have the opportunity to see it or hear it? Were they where they said they were, were they close enough to see what they say they said or hear what they say they heard? Did they have the opportunity to make the observations that they say that they made? Does any witness in the case have anything to gain or to lose from any testimony? Is there an interest, in other words? Does any witness in the case have a stake in your believing or not believing their

testimony? You may consider that if you choose to.

I will explain later how you deal with the testimony of a witness that you think is deliberately lying to you, but you should give consideration to whether you think any witness is deliberately lying with the intention of deceiving.

You might, after you have heard all of the testimony, think that a witness said something that you find isn't true. That still leaves you the opportunity to decide that they were lying or that they were mistaken, perhaps their recollection is faulty or perhaps because most of these events occurred about a year ago, they don't recall it quite accurately. You may assess, if you choose to, your view of a witness' ability to recall.

All of these kinds of things are central to the jury function and are the principle techniques and the principle responsibilities that you as a jury will use in evaluating the evidence in this case.

In just a moment, I am going to outline for you the particular charges that are contained in this indictment. Each of those charges is composed of what we call elements or key phrases or key concepts. Each criminal charge in our law is composed of a couple of different parts, each of which part or element the State must prove in order to prove a defendant guilty of that charge. Some of those elements or things that the State must prove have to do with what someone did. Some of those elements have to do with what was in the person's mind when he did it. That latter category is generally called a mental state.

In other words, for the criminal charges that you will hear in this case or at least for some of them, the State will first have to prove what someone did and, second, have to prove the mental state with which he did it. Generally speaking, what I mean when I say mental state, the two words you will hear most frequently, although there are others you

will hear, are what we call purposely or purposeful conduct and knowing conduct.

Purpose and knowledge. Purpose and knowledge are mental states. Conditions of the mind. Obviously we don't have a machine that enables us to look into somebody's mind, particularly in the past, to decide exactly what their mental state was at a particular time.

What someone's mental state was at a particular time is generally inferable or generally you can conclude something about it from an examination of all of the circumstances that exist at the time someone does whatever it is said to have done. In general, we call this a form of circumstantial evidence. That is to say, from the surrounding circumstances of what you see, you can sometimes draw certain conclusions about what someone intended or what they knew. Sometimes mental state can be proved by direct evidence. Somebody will say something specifically. I intend to make a noise. And I just made a noise.

Well, there are a lot of different reasons why I wanted to make that noise, but you just heard some direct testimony I was going to do it intentionly. I might have done something that would have allowed you to conclude I did it intentionally. It depends. Again, mental states for the most part are required to be proved or most easily able to be proved by circumstantial evidence or proof of the surrounding circumstances from which you can draw conclusions.

So, therefore, it becomes necessary for you to pay careful attention, as you listen to the evidence, to all of the surrounding circumstances because, as you will hear in just a moment, among the other things you will have to decide is if the defendant did certain things at a time and place, if he did them at all, did he do them purposely or did he do them knowingly or did he do them with some other mental state?

Now, very briefly, while I am on the subject, and I will give you more

language and more detail later, essentially what the law means by purposely means what someone intends to do, a conscious object to cause a specific action or to cause a specific result of that action. With purpose, with intention generally have the same general overall meanings.

Knowingly is different from purposely in the sense that knowingly requires that the State prove that a certain conduct was taken when the defendant was aware of what he was doing and aware of the consequences of his actions, even if he didn't specifically or purposely intend that specific action or that specific consequence. So there is a slight but important difference between the concept of doing something purposely and doing something knowingly. I will discuss that concept again with you on several occasions during the course of the trial.

Okay. With that general background of the process of our criminal trial, let

me turn briefly to outline for you the elements of the various charges that are contained in this indictment. I do that again not because I am going to discuss the specifics of the case with you -- frankly, I don't know much more about the details of the case as you do and I will learn as you learn, but what my purpose is in outlining the elements of these charges is so you can understand the kinds of things that the State is going to have to prove to your satisfaction beyond a reasonble doubt in order to prove any of the charges contained in this indictment. I am going to describe, therefore, what the law requires to be proved in order to establish these particular charges. I will do that in a general way now and my purpose is so you will understand as you hear some of the evidence why it is being presented to you.

At the end of the trial, I will present to you in somewhat more detail and possibly in a bit of a different way

the specific elements again, so you should listen carefully now and keep them in mind, but at the end of the trial I will emphasize all of them again to you so you won't have to worry about forgetting them.

The first charge in the indictment is the charge of murder. And in that charge it is charged that this defendant did purposely or knowingly by his own conduct cause the death of Gloria Simonelli or that he did purposely or knowingly by his own conduct inflict serious bodily injury to Gloria Simonelli which resulted in her death.

Now, very briefly let me explain to you what those terms in general mean. The first term is that he did purposely or knowingly do certain things of which I have already explained to you what in general purposely or knowingly means. The State would have to prove one or the other and the State in this case makes it in the alternative. They would have to prove he purposely did it or knowingly

did it.

Second, they would have to prove he acted by his own conduct. In this regard, what the law has in mind by that is, that it was this defendant whose own individual conduct was the direct and the immediate cause of the death of Gloria Simonelli and that he actively and directly participated in her death. So that is the second element there that he purposely or knowingly caused the death by his own conduct.

Third, of course, that he did cause the death; that is, as a result of his conduct, whatever it was, she was caused to die and there has to be therefore in your mind a satisfaction that what he did caused her death. That is one definition of murder. That he purposely or knowingly caused her death.

There is a second definition of murder, which is different -- and if you were satisfied about the evidence in this case you could find only one or the other -- and a second definition of murder is

the purposeful or knowing causing of serious bodily injury to somebody which results in their death. Serious bodily injury is defined in the law as a bodily injury which creates a substantial risk of death or which causes serious or permanent injury or disfigurement. How is this definition of murder different from the other?

I will discuss that in detail for you at the end of the case. It is enough that you understand now at the beginning that the essential difference is whether he intended to cause death or whether he intended to cause serious bodily injury and that serious bodily injury later resulted in death. So there are two -- either one is legally murder. It makes a difference, as I will describe later, which you find, but you should keep in mind that there is that distinction, whether he purposely or knowingly caused death or whether he purposely or knowingly caused serious bodily jury as a result of which she died and it has to do

with what his mental state was. It is murder in both cases, but the difference does have some consequence.

Those are the elements in general of the charge of murder. And, again, it is the State's obligation to prove each of those elements to you beyond a reasonable doubt.

The second charge contained in the indictment is called possession of a weapon for unlawful purposes. In this charge, the defendant is said to have knowingly possessed a weapon, in this case a handgun or firearm, with a purpose to use it unlawfully against the person of Gloria Simonelli. Here there are four elements to this charge that the State must prove.

First, that there was a firearm; second, that the defendant possessed it, meaning that he had it; and, third, that he possessed it knowingly, meaning he knew he had it and he knew that it was a firearm; and, fourth, that at the time and under the circumstances that he

knowingly possessed the firearm, it was his purpose or his conscious object to use that firearm against the person of Gloria Simonelli. Those are the four elements of that charge that the State would have to prove to your satisfaction beyond a reasonble doubt.

By the way, as you hear me describe these charges, you will see that some of the elements of the various charges tend to overlap.

Some of the elements I have just described you will hear again in another charge in just a moment. The reason for that is that the law acknowledges that one action or one series of actions by a person may constitute a violation of more than one law. When that happens, an indictment will frequently charge several different violations arising out of the same incident.

As the jury, it is your obligation to listen to the evidence about each of the charges and at the end of the case you will have to decide each charge

separately. That is to say, you should decide the evidence as to each charge as if that charge were the only charge in the case. You may reach the same decision about all of the charges, you may find a defendant guilty or not guilty about all the charges, you may find him not guilty of some and guilty of others. Depends how you view the specific evidence with respect to the elements of each charge.

The next charge in the indictment is what we call criminal contempt. And in this charge, the defendant is alleged to have -- excuse me just a moment -- purposely or knowingly violated the provisions of a judicial order entered by another judge. In that respect, the State will have to prove that in connection with some matter, there was an order of some court. The State will have to prove to your satisfaction what the terms or provisions of that order were. The State will have to prove to your satisfaction in all cases beyond a

reasonble doubt that the defendant knew of that order and knew what it was he was supposed to do or not to do and then, lastly, the State will have to prove that he did purposely or knowingly violate the terms of that order.

So, again, there are four elements to that. There was an order, he knew about it and knew what it contained and what he was supposed to do or not do and, lastly, that he purposely or knowingly violated the provisions of that order. That is called contempt of court or criminal contempt and that's what that charges.

The next charge is called attempted murder. In this charge, the defendant is alleged to have purposely attempted the murder of Patrick Sullivan.

Now, I have already described murder for you in connection with the first charge in the indictment. Murder is the purposeful or knowing and unlawful killing of somebody else, causing the death of somebody else or the attempt to

-- well, for that purpose, the murder is the causing of the killing of somebody else.

An attempted murder, attempt in the law is defined as purposely doing something which you know to be a substantial step that is designed to lead to a certain result. That's what an attempt is. It also has a common sense definition that in your every day life you understand. An attempt is an attempt, is a try. The important part is you have to know there are two important legal concepts to make an action a legal attempt.

First, that whatever the action is, it is a substantial step towards the commission of a certain crime, in this case the crime of murder and, second, that when the defendant took that action, it was his purpose or his intention to cause that result and in this case the crime of murder.

Here the State will have to prove three things.

No. 1, that the defendant did something; No. 2, that the thing that he did was a substantial step toward the murder of somebody named Patrick Sullivan; and, third, that when he did that, it was his purpose or his conscious object to cause the murder of Patrick Sullivan. Those are the elements then of the charge of attempted murder.

The next charge is what we call aggravated assault. The elements of this charge are that the defendant attempted to cause serious bodily injury to Patrick Sullivan. This is sort of similar to the attempted murder, but different in an important way.

The definition of attempt is the same thing. The difference here is that instead of alleging that he attempted to murder Patrick Sullivan, in this count the defendant is charged with attempting to inflict serious bodily injury. Again, serious bodily injury having the definition of bodily injury that causes a serious risk of death or a risk of

serious permanent injury or disfigurement.

The next charge in the indictment is again very similar to the last one, but different in slight but important ways. This charge is that the defendant attempted to cause bodily injury to Patrick Sullivan with a deadly weapon. In this case, they allege a handgun. Here they allege that he had a handgun and that he knew he had it.

Second, that in some fashion he used that handgun in an attempt to cause bodily injury to Patrick Sullivan. Bodily injury, as you might imagine, has a somewhat different definition than serious bodily injury. Serious bodily injury, as I already described, is injury that creates a serious risk of death or permanent injury or disfigurement. Bodily injury is any injury to one's body, whether it causes no mark or leaves no permanent damage. Bodily injury can be a bruise, a cut, can be any injury to the person of somebody else.

For all of those reasons, with the definitions of bodily injury and serious bodily injury, that's why you may be hearing some evidence in this case that relates to that.

The last charge in the indictment again deals with the handgun and this charge is that the defendant did knowingly possess a handgun without having first obtained a permit to carry the handgun.

In New Jersey, in general, in order to carry a handgun on the street or about one's person, the law requires the possession of a permit to do that. This defendant is charged with an offense therefore that has the following elements:

First, that he had a handgun; second, that he knew he had it and he knew what it was; and, third, that at the time he knew he had it and was carrying it, he did not have a permit required by law to carry that handgun. Those are the elements of that charge that the State

will be obliged to prove.

That, then, in general, in an overview sort of way is what the elements of the charges contained in this indictment are. I should inform you that it is possible during this trial, as in any trial, of these kinds of charges that before the trial is over and I finally speak to you at the end of the case and inform you specifically about the exact legal questions you will have to answer, it is possible that some of the charges may tend to change shape slightly. If that happens, I will explain to you at the end of the case exactly the charges that you have before you and exactly what things the State must prove.

What I have done now is given you an overview so you will understand some of the concepts and some of what evidence you are going to hear.

The last comment I want to make before I turn the matter over to Mr. Talasnik and to Mr. Davis has to do with all of our discussions of last week that

each of you participated here in this courtroom. As you already know, depending upon the results that you reach in terms of what if any of these charges you find the defendant guilty of, there is the possibility that this jury will also be involved in determining the appropriate and fitting penalty to be imposed.

I am not going to discuss that now with you in any detail. I will not discuss it now with you at all except to tell you this one most important concept and that's why I saved it until last. We have, as you already know, discussed this and we may or may not discuss it again, but it is your sworn obligation at this point to put out of your minds completely any question at this point with respect to the issues involving a penalty. Your sole and exclusive responsibility in this trial and in this part of this trial is to listen to the evidence and to decide according to the standard that I have just outlined and give to you at the end

of the case whether the State has proved any or all of these charges to your satisfaction beyond a reasonble doubt. In other words, your focus from this moment on should be solely and exclusively on the guilt or innocence of the defendant as to these charges and you should give no consideration at this point to any issues respecting the questions of penalty. You should leave that, if we get to it, for the time that we would get to it.

Okay. With that, then, I will invite Mr. Talasnik and then Mr. Davis to present to you from their respective points of view their remarks as to what they expect that you will hear during the course of the evidence in this case.

MR. TALASNIK: May it please the Court, Mr. Davis, Mr. Preston, ladies and gentlemen.

A few years back, they passed a law in New Jersey that was intended to protect victims of domestic violence. Under the procedures of this law called

simply the Domestic Violence Act, someone who was victimized by a husband or a live-in boyfriend could go immediately to the family court and get pretty much immediately an order, an order that directed that the abusing boyfriend or husband leave the premisis that the two had shared.

And in those cases where the victim also brought criminal charges such as assault against the abusing party, there were also provisions for an additional court order that would insulate the victim during the time it would take for the criminal charges to come to a court like this, a superior court, criminal division. An order that would specify that during this waiting period, before the criminal charges could be heard, that the abuser could not contact the victim, could not harass the victim or her family, could not in any way interfere with the victim's decision to follow through on the criminal charges.

Now, it is a system that works fine

provided that the abuser named in the court order is willing to comply with the terms of that order. But to some abusers that decision will not be made. Some abusers will make the decision that they are somehow above the law. Some will make the decision that no family court judge, no piece of paper, no victimized young lady is going to interfere with their lives by telling them what they can do and what they can't do. And for those people, the court order that was intended to protect and insulate the victim literally becomes more worthless than the paper that it is written on.

In March of 1988, a young Margate woman by the name of Gloria Simonelli sought refuge under the provisions of this Domestic Violence Act. After an incident that occurred in the early morning hours of the 16th of March 1988, she sought and obtained the kind of court order that I discussed. She got an order that said that the live-in boyfriend who had abused her, Richard Lee Highlander,

had to leave the residence that the two had shared in Margate. And because Gloria Simonelli wanted to do more, because she determined that she would also file criminal charges against Mr. Highlander charging him with assault, with terroristic threats and with unlawful criminal restraints, she went further and got the additional protection of a family court domestic violence order that said that while waiting for the criminal charges to come to this court, that Richard Highlander was ordered to stay away from her, to have no contact with her, to not harass her, threaten her or abuse her in any way so that she would be protected and insulated while waiting to come to superior court to testify in the criminal charges that she had brought.

But Richard Highlander made the decision that he would not comply with this order. Richard Highlander made the decision that he was somehow above the law. He decided that no family court

judge, no piece of paper, no abused young woman was going to interfere with his life and tell him what he must do or must not do, especially since Richard Highlander realized that if the criminal charges were fully prosecuted, he could end up in jail. Something that he refused to tolerate in his life.

And so Richard Highlander acted the 25th of April, 1988, three-and-a-half weeks after he sat in the family court and heard the judge order that he stay away from her. Richard Highlander acted. After securing the necessary money and transportation that he would need to get out of town that night and after going to a friend's house to pick up the gun that he had bought for this exact purpose, he stalked Gloria Simonelli. He found Gloria Simonelli and drawing that gun, he walked up to her, pointed it at her and put a bullet through her heart.

Now, it seems, ladies and gentlemen, that Gloria Simonelli, who was 30 years old when she died, had spent most of her

young life up in the Toms River area of New Jersey. She moved down to this area in the early '80s drawn like so many by the lure of employment in the casino industry. She was able to secure a casino license and soon became employed at the Tropicana Casino not as a dealer, but as the manager of a small gift shop that was located within the casino.

About a year-and-a-half before her death, while still working in Tropicana, she switched jobs and became a cigarette girl attached to this gift shop, a decision she made primarily because she could earn more money doing that.

Gloria was a good worker and she was able to save enough money to be able to buy her own condominium on Monroe Avenue in the City of Margate. And she also maintained very close relations with her parents, whom she would visit either by going there or them coming down here nearly every weekend.

In the late summer or early fall of 1987, Gloria Simonelli began to date

Richard Lee Highlander, someone she had met while working at the Tropicana Casino. Their dating relationship developed to the point that by late fall he had begun to live with her in the Monroe Avenue condominium that she had purchased.

The relationship was fine for a while. But towards the end of '87 and into the beginning of 1988 the relationship began to turn sour. And perhaps the most obvious indication of the turn in this relationship was observed by the victim's mother, who is able to see that her daughter was unhappy, that her daughter seemed fearful, that something was wrong. It deteriorated to the point that in late February or early March of 1988, Gloria's mother, Mrs. Highlander, came down to Margate and asked Richard Highlander to leave the house, told him that her daughter was no longer happy with him being there and that it was in her daughter's best interest that Richard

leave. Somehow, Richard was able to prevail on young Gloria and he ended up staying despite the requests of Gloria's mother.

That brings us to the early morning of March 16th, 1988, when Richard picked Gloria up from work. She worked the late shift and it was not uncommon for her to finish in the early morning hours, and after the two of them got home that early morning, an argument developed between the two. The argument turned violent and Gloria was beaten about the face, about the head and she received injuries to her face, she received a sprained neck, she received a broken finger and she was threatened by Richard Highlander and prevented from leaving her condominium to report the incident to the police.

Finally, late on the morning of March 16th, 1988, Gloria was permitted to leave. And she went directly to visit her doctor, whose office was located in Ventnor, the next community over. Her doctor, seeing the injuries to Gloria,

immediately notified the Margate Police, who had jurisdiction where the assault had occurred and notified her parents up in the Toms River area so that they could come down to be with her. Her parents did, in fact, come down and arrangements were made for Gloria to go to the Margate Police Department to sign a complaint charging Richard Highlander with assault and with threats and arrangements were further made the next day for her to go to Atlantic City to the family court to get this restraining order requiring that Mr. Highlander move out and arrangements were made to protect Gloria changing the locks on the doors, changing the phone number to a unlisted number. Making sure that when she went to work after a two-week absence that her mother would drive her there and that someone would be available to bring her home at night.

A few weeks after the assault complaints were signed, there was a hearing in the family court in Atlantic City on the 31st of March, a hearing in

which Gloria testified about what had happened to her at the hands of Richard Highlander, a hearing that Richard Highlander himself attended. And at the conclusion of that hearing on the 31st of March, there was this second kind of court order that I told you about requiring that Richard Highlander leave her alone, insulating Gloria Simonelli by in any way being bothered, harassed or confronted by Richard Highlander until the assault charges that Gloria had brought could be heard in the superior court, criminal division.

What was Richard Highlander doing after this period of time? You will hear evidence that Richard Highlander stewed about what had happened, evidence that Richard Highlander was obsessed with convincing Gloria to drop these charges against him because he knew and feared that if she went through with it, if she came to court in here and testified against him the same way she did in the family court hearing, that he would be

going to jail and he determined that no girl was going to put him in jail for an incident like this.

And so he made efforts to try to prevail on Gloria to drop the charges. He had intermediaries, friends of his, attempt to contact Gloria to try to get her to change her mind. That didn't work. He hired a lawyer to try to contact Simonelli's parents, her parents to try to convince them that they should have Gloria drop the charges, even threatening a civil suit for injuries that Richard obtained and suffered during this struggle back in March. And all of that was to no avail and so the decision was made to resolve the problem another way.

Richard Highlander acquired a gun, a revolver, and because he wasn't living at any one place, but rather was spending time with different friends, he took that revolver to an acquaintance of his, a fellow names Rufus Duff, and told Rufus to hold the gun, that at the appropriate

time he would be back for that gun.

On the 25th of April, 1988, in the early morning hours, Richard Highlander sought out another acquaintance, a fellow by the name of Mickey Chambers, who was a professional driver, a chauffeur, and he asked Mr. Chambers, would Mr. Chambers be willing to do some driving for him that day, that he wanted to do some things and he wanted to get his life together and was going to leave town so as not to have to face the charges brought against him by Gloria. And he offered to pay Mr. Chambers $300 for driving him around.

On that day and as the day progressed, first Richard Highlander made arrangements to collect his last paycheck, some $1,600, so he would have traveling money to get out of town. He went with Mr. Chambers to a couple of different rental agencies to find a car and they rented a car that would provide transportation for Richard to get out of town. And then began the process of looking for Gloria Simonelli by driving

through Margate and through Ventnor and through Atlantic City looking for Gloria Simonelli's car, a black Toyota Camry.

Sometime around dinner, that Camry was seen parked in the parking lot of the Greenhouse Restaurant in Margate City. And after it was recognized by Mr. Highlander, after he realized that that was, in fact, Gloria Simonelli's car, he then directed his driver to take him to Atlantic City and after a couple of stops for drinks, they went to Rufus Duff's house, where Richard Highlander went in,. retrieved his revolver and got back in the car.

He then directed Mickey Chambers to take him back down Atlantic Avenue toward Margate to see if Gloria's car was still in the parking lot. It was now sometime after nine o'clock on the evening of the 25th and Mickey Chambers drove the rented car at Richard Highlander's instructions through the parking lot that is attached to the Greenhouse Restaurant and, sure enough, Gloria's car was there and just

as they pulled through the parking lot, Richard recognized Gloria Simonelli walking out from the restaurant towards her car in the parking lot with a male companion, who we would learn later was Patrick Sullivan, and upon seeing them, he exclaimed, there she is. He reached under the seat on which he had ridden, retrieved the gun that he had gotten from Rufus Duff's house, got out of the car and approached Gloria Simonelli and Patrick Sullivan with the gun at his side, approaching to within about 10 feet, he raised the gun and fired at Gloria Simonelli and she fell backwards. Either because of that bullet or because she tripped in an effort to get away from him, and as she fell backwards, Highlander approached even closer and, standing over her, pointed the gun dead at her chest and pulled the trigger, propelling a bullet that would rip through her lungs and her heart and would less than an hour later result in her being declared dead by the medical

examiner.

Having shot Gloria Simonelli, that which he intended to do, he turned to go back to Mickey Chambers' car and thought better of the fellow who had come out with Gloria Simonelli and he turned the gun on him and pulled the trigger as well, perceiving Mr. Sullivan as a threat to his planned escaped. The bullet did not hit Mr. Sullivan, but at the time -- at the time Richard Highlander didn't know that. He got back into the car, a car being driven by a stunned Mickey Chambers, who had no idea that this was going to happen, and crouching down in the floor well on the passenger side, he directed Mickey Chambers to drive out of town all the way to New York, a trip that was punctuated by arguments all the way up with Mickey Chambers wanting to know from Richard Highlander why, why he had put him in this situation of being an unwitting accomplice to a murder. Richard Highlander made it up to New York and thereafter got a bus from the Port

Authority to parts unknown.

As a result of the background of the relationship between Richard Highlander and Gloria Simonelli and as a result of other evidence about which you will hear, the decision was made to charge Richard Highlander with the murder of Gloria Simonelli and the attempted murder of Patrick Sullivan. The hard part would be finding him. The break that they needed, that the police needed to find Richard Highlander came about four days after the shooting incident when the local police got a phone call from a woman by the name of Judy Breyers (check name). She lives in Alderson, West Virginia, and she is the aunt of Richard Highlander. Judy Breyers called the local police and told the local police that Richard Highlander had arrived in West Virginia on the 27th of April, two days after the shooting. That he had stayed with her in West Virginia for about a day and then on Thursday, the 28th of April, she had put him on a bus going south with stops to be

made in Richmond, Virginia, and Columbia, South Carolina.

With this information, the local police asked for the assistance of the FBI in attempting to locate and apprehend Richard Highlander. And a couple of weeks later, on the 12th of May, 1988, the FBI did locate and did apprehend Richard Highlander in the backyard of a private residence in Columbia, South Carolina.

The local authorities were notified, they went down to South Carolina, took Richard Highlander into custody and brought him back up here so he could face you for the killing of Gloria Simonelli and for the attempted killing of Patrick Sullivan.

Now, how is the State -- how am I going to prove to you that it was Richard Highlander on the 25th of April, 1988, who took the young life of Gloria Simonelli and tried to take the life of Patrick Sullivan? Well, we are not going to do it with physical evidence. As you

will hear during the course of the trial, the gun that was used in the crime was never recovered. That gun went with Mr. Highlander on his flight to New York and the gun disappeared while he was up in New York through the carelessness of the driver Mickey Chambers. And because the gun was never recovered, you will not hear any fingerprint evidence, that Mr. Highlander's fingerprints were on the gun. You will not hear ballistics evidence that the bullet removed from Gloria's body came from the gun that is traceable to Mr. Highlander. You won't hear any of that. There is no physical evidence.

Nor will we rely exclusively on eyewitness evidence. Because, as you will hear, the woman who was working at the Greenhouse that night, who saw the entire shooting incident, was unable to provide a description of the shooter and although Mr. Sullivan, the fellow who was shot at and missed, did provide a description

that is very close to that of Mr. Highlander, we recognize that he had literally seconds to make these observations before reacting by throwing himself on the ground at the sight of a man with a gun pulling the trigger in his direction. So we will not be relying exclusively on eyewitness identification to prove that Mr. Highlander is the shooter.

In this case, ladies and gentlemen, perhaps the best evidence that Richard Highlander is the shooter is the evidence of Richard Highlander's own words. Words that were spoken by him before the killing indicating that he intended to kill her and words that were spoken by him after the killing admitting that he was the man who shot Gloria, that he was the man who shot at but missed Patrick Sullivan.

During the course of the trial, you will hear testimony from various friends and acquaintances of Richard Highlander who had contact with him before the

killing took place. People with whom Mr. Highlander lived, a girl who took him to a lawyer's office when he was looking for help, people who were working in an apartment that he visited the weekend before the killing and from these people you will hear that Richard Highlander was obsessed with the problems he had had with Gloria Simonelli, that he was insistent that under no circumstances would he go to jail over the charges that she had brought against him and he even indicated to some of these people that, if necessary, he would kill her to prevent her from testifying against him. You will hear from an Atlantic City police officer who had weekly contact with Mr. Highlander between the time of the domestic violence hearing and indictment and the time of the killing and during these frequent contact Mr. Highlander expressed some of the same thoughts, that he was angry with Gloria for bringing these charges against him, that under no circumstances would he go

to jail over the charges that she had brought against him.

You will hear from the fellow who stored the gun, Rufus Duff, that at the time the gun was dropped off, Richard Highlander offered him $5,000 to kill Gloria Simonelli; and when that request didn't go anywhere, he asked Rufus Duff if Rufus knew of anybody else who might be interested in doing the job for him for that kind of money.

And you will hear from Mickey Chambers, the fellow who drove him to the scene and became an unwitting accomplice to all of this, that when Richard Highlander got back in the car, he admitted that he had shot Gloria and he admitted he had shot Sullivan and he asked Chambers whether Chambers could tell if Sullivan had been hit.

And from Judy Breyers, the aunt who lives in West Virginia and to whom Richard Highlander fled, you will hear that he admitted to her that he had shot Gloria, he had shot the man who was with

her and not content with simply telling her orally that he had done it, how he acted it out for her, explaining to her that after the first shot, Gloria said, oh, my God, I don't believe this is happening to me, and that caused him to shoot her again.

And from the FBI who arrested him on the 12th of May, you will hear that Richard Highlander, after being duly advised of his various rights to remain silent, admitted he shot Gloria Simonelli, admitted he shot at Patrick Sullivan and much the same was admitted to the local police who went down there and questioned him and brought him back up to stand trial before you.

And there is more. Not only will we be able to use Richard Highlander's words, to show that he was, in fact, the shooter that day, but we will also be able to use his words and his conduct to demonstrate that everything he did was conscious, was purposeful, was intentional.

You will hear how deliberately he went about securing a gun, deliberately secreting it someplace, locating somebody to drive him, getting a rental car, also he would be in a position to leave town as soon as the crime was completed.

You will hear from persons who had contact with Richard the day before the shooting that he predicted he would shoot her and that if they didn't believe it, they could read the paper the next day and you will hear in the statements to the FBI and to the local police that he told them that he had planned to kill Gloria for at least a week before the shooting occurred, that he did it because he felt he needed to, that he felt no remorse and that the killing was premeditated.

Ladies and gentlemen, today we begin a journey that I suspect will take us the better of the next two weeks. And I ask for your close attention throughout this period of time as the evidence is put in because everything that is brought before

you has a purpose. The evidence is intended to give you a unique insight into these critical times for these two young people resulting in the death of one of them. All of this evidence is intended to demonstrate to you beyond a reasonable doubt that it was Richard Highlander who walked up to Gloria Simonelli that day, that it was Richard Highlander who purposely murdered Gloria Simonelli that day to prevent her from testifying against him and that it was Richard Highlander, who in the course of shooting Gloria Simonelli, made a conscious decision to shoot Patrick Sullivan as well, less he interfere with the scheme with the plan to kill Gloria and to get away with it.

Thank you.

THE COURT: Thank you, Mr. Talasnik.

MR. DAVIS: May it please the Court, Mr. Talasnik, ladies and gentlemen of the jury.

As you know by now, I represent the

defendant in this matter Richard Highlander. Now, you've just sat here for the past 30, 35, 40 minutes and you have listened to Mr. Talasnik. I indicate to you that at this stage of the proceedings that everything that Mr. Talasnik has indicated to you somewhat related to him. Mr. Talasnik did not personally witness anything that he has indicated to the Court. All that he can say to you at this stage of the proceedings, ladies and gentlemen, this is what I intend to prove. The fact that he said it doesn't make it a fact.

As the Judge indicated to you in his initial instructions to the jury, the evidence will come from that witness stand and only from the witness stand. You are not to consider what I say to determine whether or not Mr. Highlander is guilty. You are not to listen and determine from what Mr. Talasnik says whether or not Mr. Highlander is guilty. It is only from those witnesses who will take that witness stand that will

determine your verdict of guilty or not guilty surrounding this matter.

I think something else the Judge indicated to you is very important. The Judge will tell you what the law is. There is no question about that. You will have to consider the law.

One of the most important things, ladies and gentlemen, in determining your verdict is your common sense and your life's experiences. Those two things will get you very, very close to the truth.

Now, I'm telling you at this stage of the proceedings Mr. Highlander is not guilty of murder. I'm also going to indicate to you ladies and gentlemen that he did take the life of Ms. Simonelli. I will also indicate to you that Mr. Highlander is guilty of the charge of manslaughter, but I am saying to you at this stage of the proceedings and I will indicate it again and again that he is not guilty of the crime of murder.

Now, Mr. Talasnik has stood here and

he has indicated to you ladies and gentlemen that this is a case of a man in total disregard of a court order, that this is a case of a man who refuses to go to jail. Ladies and gentlemen, this is not a case of a man who is in total disregard of a court order, a man who refuses to go to jail, as the prosecutor has indicated to you, refuses to let a woman put him in jail. That is not this case. That's not this case at all. No. No one wants to go to jail, but this is not a case that if you send me to jail, I'm going to kill you. That is not it.

Ladies and gentlemen of the jury, this is a case of a man who allowed himself to become too emotionally involved with a woman and, to put it another way, this is a man -- I'm not going to say he allowed himself because maybe you don't allow yourself to fall in love, but this is a case of a man who fell in love and eventually was unable to control his emotion and, as a result of this involvement, he took the life of the

person he loved the most on this earth, which was Gloria Simonelli.

Now, I will give you a definition of love and I will talk about it in the closing. We all know what love is supposed to make you feel like. It's supposed to make you smell blossoms on the trees when there is no blossoms there, when you look at her eyes you are supposed to see the sun rise. It is supposed to do all these good things. Fortunately it does, but, ladies and gentlemen, you also know that it takes the other end of the spectrum, too. Makes some people leap off roofs, makes some people, as Richard Highlander, take the life of the person. But a definition of love that I like is it is an overestimation of one person, in this case, a woman, his overestimation of a woman compared to the rest of the women in the world.

When you see somebody and you fall in love, you think that this is God's gift, that this is the beginning, this is

the end, the alpha, is the omega, this is my world, this is it, this is what I was born for and that's what Richard thought he had. He thought that he had his world.

Now, as Mr. Talasnik indicated to you, Richard met Gloria Simonelli and he became emotionally involved. But what Mr. Talasnik failed to indicate to you at the beginning and which will be shown, it wasn't just a boyfriend-girlfriend relationship. They commenced to live together almost immediately. He bought her several gifts. He bought her a mink coat. The automobile that Mr. Talasnik is talking about, he purchased the automobile. He gave her up to $1,500 a clip. He took her to Colorado for vacation, took her to California for vacation, he sent limousines to pick her up from work. This young lady wasn't refusing any of these things. She was accepting and using. In fact, ladies and gentlemen, you will see some evidence where Gloria was actually using Mr.

Highlander. He bought her the best. He did all that he could do.

Now, it will also be shown that Mr. Highlander wasn't some Joe Blow on the street not working. He had a business. He had a window washing business, a very good business. And all the monies he was making from this window washing business was going to Gloria Simonelli, so much so they had arguments because she wanted more than he could give.

Ladies and gentlemen of the jury, you will also be shown, as Mr. Talasnik indicated, there came a down side. And this down side it will be shown was brought on by too much alcohol, brought on by too much cocaine. Not just Mr. Highlander, but Gloria Simonelli was embodied in these things, too.

As Mr. Talasnik indicated, the mother did come down and she wanted Richard to leave. The daughter never asked Richard to leave at that point. The mother came in and asked him to leave.

It will be shown he agreed with the mother that the alcohol, that the coke should go and that they should try to remain together. And he tried this. But it didn't work.

As Mr. Talasnik indicated, on the night of March 16, there was a confrontation. Gloria got smacked, Richard got his ankle broke. Gloria left, she went to the police station. And, as Mr. Talasnik indicated, she brought a complaint. She brought a disorderly complaint, a simple assault and battery. The next day, Richard was removed from the household.

Now, here is a man who has given many, many gifts -- it will be shown a couple of days before he bought her a $900 set of luggage. What did they throw him out with? Plastic bags.

Now, remember, ladies and gentlemen, this is a person who is deeply in love. This is a man who had a business. After he was thrown out, it will be shown for the next six or seven weeks he went to

the hospital, he was operated on, didn't receive any calls from the one that he loved, she didn't contact him at all, didn't attempt to contact him. As Mr. Talasnik indicated, he was sending his friends out, please talk to Gloria, let her talk to me, see if we can get back together and he did the next thing that was best, he hired an attorney and had an attorney attempt to contact her with no response.

Ladies and gentlemen, ladies and gentlemen of the jury, it is not the fright of going to jail. That's not the question here. The question here is how did she do it? That's what upset him. It may be a very thin line, ladies and gentlemen of the jury, but that's the question. It's how did she put me out? You put me out on the street with nothing. I came here and I gave all that I had and now you throw me out with a few plastic bags.

Here is a man who couldn't go to work after that, a man that laid around

and had to drink. Here is a man who laid around and continuously used drugs and it ate at him and ate at him, because the one who he loved did not have the common courtesy to call him and say, Richard, it is over or, hey, let's do it like a man and woman and not just throw me out on the street like a dog.

That, ladies and gentlemen, is the reason. Not, on the night that it happened -- and you are going to hear all kinds of testimony from people, as Mr. Talasnik has indicated to you, who will try to indicate to you that this was a premeditated type of thing, that Richard intended to kill this woman all the time. That is not the fact. I am not going to say Mr. Highlander never said I would like to kill her. We all have said we would like to kill somebody. We all got upset and angry. But the man never wished to kill the girl that he loved, Gloria Simonelli.

Now, I want you to listen to the various witnesses that Mr. Talasnik or

the State will present. And when you listen to these witnesses, and I will not call them off by name right now, but I want you to listen to their credibility. I am going to call one because it was mentioned in the opening, and that was the driver and we will get to him when he gets on the witness stand, because he acts like the driver carelessly got rid of this gun in New York. It will be shown that it wasn't carelessly gotten rid of. It was gotten rid of on intention, on purpose, so he could buy some coke while he was in New York with the profits from the gun and that is to show you, ladies and gentlemen, the type of credibility that we are going to deal with. Each of these witnesses will have a big, big problem with their credibility.

Now, on the night of the murder or the manslaughter, it was just by happenstance that Gloria happened to be in the Greenhouse. It wasn't premeditated. Mr. Highlander didn't know it and it will be shown through the

witnesses. It was just by happenstance that he was in the parking lot when she stepped out. And it will be shown, as Mr. Talasnik said, through the defendant's mouth that he gave statements to the police, that when he looked up and he saw Gloria come out of that back door, that initially there was no problem. A few seconds later, when the male companion came out, what flashed through his mind, ladies and gentlemen of the jury, was an emotional rage. It was my woman, getting ready to get into the car that I bought, the car that I washed, the car that I kept clean, getting ready to take this man back to my bed and make love to my woman and that, ladies and gentlemen, is what he could not control. It wasn't jail. It wasn't the restraining order. He couldn't control the fact that there was another man getting ready to go to bed with my woman.

Ladies and gentlemen, when you listen to all the facts, you are going to come to the conclusion that this was an

instantaneous emotional rage, he was in a love situation and he couldn't control it and that, ladies and gentlemen -- ladies and gentlemen of the jury, will fall into manslaughter and there is no question that he is guilty of that.

I will say one thing in closing, ladies and gentlemen. As the Judge has indicated to you, the burden of proof is on Mr. Talasnik. Mr. Talasnik has the burden of proving to you beyond a reasonable doubt everything that he has indicated to you that he is going to prove.

Mr. Highlander doesn't really have to prove anything. Of course, we will be here and we will be contesting and we will be trying, no question about that. But the burden of proof is on Mr. Talasnik.

Ladies and gentlemen of the jury, in closing, I would indicate to you and I appreciate your attention, and I would think that probably one of the hardest things you will have to do is to listen

to all the facts and don't make up your mind until you have heard the last witness and you really won't know who the last witness is until the Judge tells you that the defense has closed its case.

Thank you again and I would indicate to you once again that justice in this case would dictate that the only crime that the defendant can be found guilty of is the crime of manslaughter.

Thank you.

THE COURT: Thank you, gentlemen.

We will recess in just a second.

I want to speak briefly with the attorneys before.

(Whereupon, the following side bar discussion took place)

THE COURT: It occurs to me that without going into any detail, because I don't know at this stage what appropriate detail would be, that I should simply introduce the general concept that manslaughter is a form of murder that differs from murder in the requisite mental state.

Do you have any particular comment?

MR. TALASNIK: I would think that the appropriate time to do that is in the charge to the jury.

THE COURT: It certainly would be appropriate to do it then, but they are going to walk out of here and speculate.

MR. TALASNIK: I am afraid if you begin to speak about it now that it may appear to be a conscious decision by you that it is something they should start thinking about now as opposed to waiting until the evidence is in and they have an evidentual framework to consider an appropriate charge.

Your Honor will have to, of course, make a threshold determination as to whether there is sufficient evidence to charge passion provocation manslaughter.

THE COURT: I haven't said that. There are a number of different definitions. That may or may not be one of them. I have no intention now of discussing any of the specific definitions of manslaughter, except to

introduce the concept that manslaughter is a mental state --

MR. TALASNIK: It is not really murder.

THE COURT: It is homicide.

MR. TALASNIK: Yes.

THE COURT: Homicide.

MR. TALASNIK: It is my position that a comment at this point on the heels of the defense opening would create, I think, prejudice to the State in that it would cause them to focus already on a concept that they have no evidentual framework to consider.

MR. DAVIS: I would concur with your thoughts with regard to this matter.

THE COURT: Mr. Talasnik, I don't intend to go very far. I am reluctant to leave the jury, which I otherwise consider to be pretty well informed, having to guess throughout the course of the trial as to what Mr. Davis is talking about. I didn't know until he said it that that was going to be the thrust of the defense. I had no notice of it or I

would have discussed it earlier. I will make a limited comment now.

(Whereupon, the side bar discussion concluded)

THE COURT: Ladies and gentlemen, we are going to recess at this point and I will invite Mr. Talasnik to call his first witness right after lunch. Before I do, I just want to follow up what I initially told you this morning with one brief comment and then to make some general requests.

First, as vou will recall a few minutes ago earlier this morning, before counsel spoke, I gave you a very general outline of what the elements of the various charges in this indictment are. And specifically under the heading of murder, I explained to you what the legal definition of murder is, that it is a form of taking the life of somebody else under circumstances -- certain circumstances with a purposeful or knowing state of mind. You just heard reference made during the course of the

opening statement to the crime of manslaughter. I did not define the legal definition of manslaughter for you when I spoke to you earlier.

Manslaughter is not specifically charged as a crime in this case. It may be at the end of the case. Manslaughter in one or more of its various definitions may be presented to you for your consideration. Frankly, I do not know whether at this point that will happen or not, but in view of the fact that reference to that crime was made, I will simply indicate to you, without a lot of detail at this point, but so you understand the general framework of the issue you are being asked to focus upon, that manslaughter is a form of homicide that involves a different mental state; that is, a mental state other than purposely or knowingly causing the death of somebody else. I am not going to elaborate in detail at this point because, frankly, I don't know yet what I need to tell you, but you should simply

understand in general that the concept of manslaughter is a homicide with the killing of someone else under different circumstances or with a different mental state than would be required to be involved in the crime of murder as I have described it to you. At the moment, the charge that is contained in the indictment is murder. And that is what the State has charged.

Now, we are going to recess, as I have indicated. It is a nice day, so you get a little longer lunch today. We will recess until 1:30 and then I will ask you to report back. Report directly to the jury room where we have you.

I hope you won't get bored or take for granted what I am about to say. You will hear many times during the course of the trial -- it should reflect, as I think I told you, not any lack of confidence by me in your ability or in your concentration, but rather a reflection of the importance of the priority I place on it. During this

recess, during lunch and as in any recess during the trial, regardless of the temptation which I know must be great, you are not permitted to discuss anything about the case with each other. You certainly may not discuss it with anybody else in your family or out, nor should you permit anyone to discuss it with you.

Again, I remind you, if in your luncheon you wander, walking around, you should see anybody connected with the trial who makes an attempt to avoid you, you should understand that is their responsibility and you are not to be in any way hurt or insulted or take offense at it.

Have a pleasant lunch, see you at 1:30.

(Whereupon, the jury leaves the courtroom)

THE COURT: Mr. Talasnik, who is first?

MR. TALASNIK: John Simonelli, your Honor.

THE COURT: Her father?

MR. TALASNIK: Yes, your Honor.

THE COURT: Who is after that?

MR. TALASNIK: Gloria Simonelli, your Honor, the victim's mother.

THE COURT: And after her?

MR. TALASNIK: Helen Scully.

THE COURT: Who is that?

MR. TALASNIK: She's a friend of the victim.

THE COURT: Okay, do you anticipate going much farther today?

MR. TALASNIK: I will have five witnesses here, ready to testify this afternoon.

THE COURT: Okay. Who are the other two?

MR. TALASNIK: Actually six. Jean Bruni, who is a supervisor of the victim.

THE COURT: At work?

MR. TALASNIK: Yes. Diane Pond, to whom various statements were made by the defendant. And Jennifer Saitz, who is in the same situation.

THE COURT: Okay. That probably gets us through the afternoon anyway.

Mr. Davis, I would, now that you have made your opening and placed the defense and the jury and State and me on notice where are you coming from, I would like the benefit whenever you can get it to me again what emphasis, earlier being better, of whatever specific requests you are going to have.

You used the phrase of manslaughter to the jury which is, of course, generic. There are at least three different definitions, one aggravating and two manslaughter. I don't know yet or know what you consider to charge and I am not suggesting any impropriety, just the earlier you can tell me what you want me to know, the better. I don't require any particular degree of formality. You can write it on the back of an envelope or tell it to me on the record when you are ready, but the more time I have to get ready for it, the better I will be.

Anything further?

MR. TALASNIK: No.

MR. DAVIS: No.

Q. How old was Gloria at the time of her death?
A. 30.
Q. Mr. Simonelli, did your daughter reside with you in the residence in Lavallette for some period of time?
A. Yes, since we moved down from Brooklyn. She was like eight years old and she lived there until -- after she got out of college and went to -- she went to the gambling school to learn how to deal and she lived with me then and then got a job down to Caesars and came down to Caesars Palace and lived with girlfriends.
Q. Would this have been sometime in the early 1980s when she moved to the Atlantic County area?
A. '81, '82, something like that.
Q. Now, you've referred to her going to gambling school. Dealer school, something like that?
A. It is a dealer school, yes. In Brigantine.
Q. Was that her purpose in coming down here?

A. Yes. In Ocean County, she got out of college and she went to the junior college and she went to marketing and there is not much opportunity for much money in the Ocean County area for that thing, so the Atlantic City area had opened up and she figured she would get a job dealing and bring up her income.

Q. What kind of job did she have when she began working with Tropicana casino?

A. She was a night manager.

Q. Of what?

A. Supervisor, of the cigarette -- of the courtesy place where they sell the dolls and stuff.

Q. Did she change jobs before her death?

A. Yes. She became a -- a cigarette girl left and they offered her the job so she could make more income and she accepted it.

Q. Now, during the time that she lived down here, did she have an occasion to buy any real estate?

A. She bought the condominium on 101 Margate.

Q. Now --

THE COURT: Where?

THE WITNESS: 101 Margate, in Margate on Monroe Avenue.
BY MR. TALASNIK:
Q. So it is on Monroe Avenue in the City of Margate?
A. City of Margate, yes.
Q. Do you recall approximately when the condo was purchased by her?
A. I think it was October. It had to be -- it was -- she would own it three years in October, so -- it would have to be '86, I think. '86 or '85.
Q. Who paid for the condo?
A. She put down some money and I lent her some money and her brother lent her money for the downpayment.
Q. Who got the mortgage?
A. It was under my name. Only 17 something a year, it would be hard for her to get a mortgage, so we decided, me and her brother, we would put it under my name and she would pay back the downpayments we gave her.
Q. Had she paid you back by any time?
A. In fact, she gave her brother money because her brother bought a house in January

of last year in California, San Clemente, and she had given him his money so he could have money for downpayment.

Q. Was she able to carry her normal monthly payments by herself?

A. With no problem.

Q. In the fall of 1987, did you have occasion to learn that Gloria had begun to date a man by the name of Richard Highlander?

A. Yes.

Q. Do you recall about when it was you learned of her relationship with Richard Highlander?

A. It had to be a little bit before Thanksgiving or maybe a little before that. Maybe a week or two before that. Somewhere in that area.

Q. How close was your relationship with your daughter in terms of visitation during this period of time?

A. We used to go down there almost every weekend.

Q. When was the first time that you met this new boyfriend, this Richard Highlander fellow?

A. I think it was Thanksgiving day, if I'm not mistaken.
Q. Would you tell us about that contact?
A. Well, since my daughter has been down there, we always -- Thanksgiving day we spend with her, I take her out to dinner and my sister-in-law, my wife Gloria and Gloria said invite this Highlander fellow and we will go to dinner. We go to the Tuckahoe Inn. Every year we used to go there, you know. She would have to work that night, Thanksgiving night, so we would have an early Thanksgiving like two o'clock, 2:30, so she could get ready for work for 6:00 or 7:00 she had to be in. And we went down there and he had hired a limousine and he said, well, it's too many of us in a car, so we took the limousine and I insisted I pay for the dinner and everything because that -- it is a family tradition and I usually do.
Q. So you paid for the dinner?
A. I paid for everything.
Q. I want you to look around the room and tell us if you recognize the man that was introduced to you by your daughter as Richard

Highlander?
A. The gentleman in the middle.
THE COURT: The record reflects the witness points to the defendant.
BY MR. TALASNIK:
Q. Mr. Simonelli, did you have occasion to see Mr. Highlander again after this Thanksgiving visit?
A. Yes, several times.
Q. Did you ever have occasion to see him up in Lavallette, up where you live?
A. Yes, he came to our house.
Q. Do you remember when that might have been?
A. I know he came Christmas Eve, but it would be hard to say he came before that, if he was up there a day before that. I can't remember if he was there, but I remember Christmas Eve because my son had come in from California and his wife.
Q. What about into January of 1988, did you see Mr. Highlander up your way during that month?
A. Yes. He had come up and they -- my daughter said she was going to buy a new car

and I said, could you carry the payment and she said yes, i'm going to lease it because I leased my car and she said she would like to lease the car. So I said, have you got any money, I'll give you some money for the downpayment and she said no, I'll put it on my credit cards because we're only leasing it.

I said okay, as long as you can carry the payment because I had a balloon mortgage and it was up to about nine percent and I said your mortgage will go up $30.00 next month, so it will be $30.00 more and she said it's all right. no problem, because tips are good and we are starting to get around to the good time of the year, Christmas time. We get into February, it is a very good time and I'll be making a lot of money. She said I got a few dollars put away.

Q. Mr. Simonelli, you were able to discuss with your daughter Gloria as to how the car would be purchased or leased and who would pay for it?

A. Yes.

Q. And based on those discussions with Gloria, who was going to pay for the car?

A. She said she was going to pay for it. The payments are 300-something a month. She only leased it for three and I said why didn't you lease it for more and she said no, I wanted to get it off my back fast. She sold another car which she had money from.

MR. TALASNIK: At this time, your Honor, I would like a series of documents I would like marked as S-47 for identification.

THE COURT: S-47.

(Below-described document marked Exhibit S-47 for identification)

MR. TALASNIK: I will show S-47 to Mr. Davis.

BY MR. TALASNIK:

Q. Mr. Simonelli, I am going to show you a group of documents that have together been marked S-47 for identification. I would like you to look at them and tell me if you recognize what they are.

A. This is the lease agreement.

MR. DAVIS: I am going to object to him testifying about S-47. I think it indicates what they are. I don't think he has any personal knowledge regarding these

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SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION-ATLANTIC COUNTY
INDICTMENT NOS. 88-06-1443, 87-02-0325
87-02-0223, 86-03-0590

STATE OF NEW JERSEY

vs.

RICHARD HIGHLANDER

TRANSCRIPT OF
PROCEEDINGS

FILED
APPELLATE DIVISION
JUL 11 1990

Atlantic County Courthouse
Mays Landing, New Jersey
Monday, June 12, 1989

BEFORE: STEVEN P. PERSKIE, J.S.C.

ORDERED BY: JAMES JUKES,
Assistant Public Defender

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

MURRAY TALASNIK, Assistant Prosecutor
On Behalf of the State

NATHAN DAVIS, Assistant Public Defender
and
MICHAEL PRESTON, Assistant Public Defender
On Behalf of the Defendant

Reported by: Konstantin Koletas, CSR
Atlantic County Courthouse
Mays Landing, New Jersey

documents.

MR. TALASNIK: The question at this point was whether Mr. Simonelli recognizes what the documents are. I have not begun to question him about the information contained on the documents.

THE COURT: I think he would need a foundation that he recognizes them, Mr. Talasnik.

MR. TALASNIK: That was my first question, your Honor, whether Mr. Simonelli recognizes what the documents are.

THE COURT: Well, let's hear how he recognizes before we hear what they are.

BY MR. TALASNIK:

Q. Do you recognize what the documents are, Mr. Simonelli?

A. Yes.

Q. How or what is it about those documents that looks familiar to you? How do you recognize them?

A. Number one, she left them right -- she left all her personal papers at my house because she had an apartment and she was afraid in case it was stolen. Her personal

stuff was left at my house.
Q. These were documents --
A. These document were at my house.
Q. And they were left at your residence by your daughter Gloria?
A. Yes.
Q. And they had been in your custody --
MR. DAVIS: I object to the leading.
A. The registration on the car was also there, yes.
THE COURT: The objection somewhere in the middle of that is sustained. Stay away from leading questions, Mr. Talasnik.
MR. TALASNIK: Okay.
BY MR. TALASNIK:
Q. Recognizing what those documents are, given they had been left with you by your daughter, can you tell us generally what those documents are?
A. They were for leasing an automobile, an '88 Toyota Camry.
Q. Whose name is the lease in?
A. Gloria Simonelli.
Q. Refer to the first few documents that

are attached, the shorter ones at the very front. Do you recognize what those documents are?

A. Yes.

Q. Are there signatures on those documents that you recognize?

A. Yes.

Q. Have you had occasion in the past to see your daughter's handwriting?

A. Yes.

Q. Do you recognize the writing on those checks as being that of your daughter Gloria Simonelli?

A. Yes, I do.

Q. That being the case, do you recognize what those documents are?

A. Yes.

Q. What do they appear to be?

A. They appear to be lease payments.

Q. Written by whom?

A. Gloria Simonelli. A money order and two checks.

Q. Mr. Simonelli, I've got two photographs that have been marked as S-23 and S-24 for identification.

I would like you to look at these photographs and tell me first if you recognize what they depict.

A. That was Gloria's car.

Q. Do you recognize what the photographs depict?

A. No.

Q. Do you recognize what is on the pictures?

A. Yes.

Q. What is it that is on the pictures?

A. My daughter's bag there and her car.

THE COURT: Indicating which picture on the right?

THE WITNESS: This.

THE COURT: Mr. Talasnik?

MR. TALASNIK: S-23.

Q. You recognize this item as what?

A. My daughter's automobile and this is her pocketbook.

Q. On photograph S-24, what do you recognize that to be?

A. Seems to be the back of the automobile.

Q. Okay. Is this the automobile that you

have described for us was leased and paid for by your daughter?

A. Yes, sir.

Q. Mr. Simonelli, I want you to now think to the afternoon or late morning of March 16, 1988. What were you doing that day? It was a Wednesday.

A. I was working.

Q. At some point in the day, were you contacted by your wife for some reason?

A. I think it was just before noon, my wife called me and said Gloria was beat up, would you --

MR. DAVIS: I object to this. It is not responsive to the question.

THE COURT: The question has been answered yes. You may proceed.

BY MR. TALASNIK:

Q. Did you have a discussion with your wife about someone?

A. I had a -- they said --

MR. DAVIS: Again, I object.

THE COURT: The question was, did you have a discussion with your wife about something.

THE WITNESS: Yes.
BY MR. TALASNIK:
Q. And who was the topic of the conversation that you had with your wife?
A. About my daughter.
Q. From response to that phone call, what did you and your wife do?
A. I got permission to leave work, picked up my wife and we went down to my daughter's place. We went to my daughter's -- we went to the doctor's office first.
Q. Why did you go to the doctor's office?
A. It was the doctor that called my wife.
Q. And what did you find when you got there?
A. That my daughter -- the police already took my daughter back to her apartment and that my daughter was at her apartment and then we left for the apartment.
Q. Did you arrive at your daughter's apartment, the condominium she was paying for?
A. Yes.
Q. What did you find when you got there?
A. I found my daughter beaten, had bruises on her and everything and the doctor

suggested we take her over for x-rays and I said okay, let's get in the car, and we went to the Somers Point hospital.

Q. Did you transport your daughter to the hospital?

A. Yes, I took my daughter to the hospital. I drove.

Q. Did you remain there with her?

A. Until all the x-rays and after they got done treating her.

Q. Did you have occasion to see your daughter?

A. Yes.

Q. What did she look like?

A. Not too good.

Q. Well, tell the jury.

A. Her finger was like this.

THE COURT: Like what?

A. Like this. It was bent and broken, they put a splint on it. Broke her finger. They had to put a neck brace on her, afraid she had a concussion and they went through a concussion thing and they said we'll give you some pills so it will relieve the pain.

Q. How was your daughter emotionally?

A. Very upset.
Q. What do you mean by that?
A. I mean, she -- I mean, she was crying, she was hurt and she said she was -- --
MR. DAVIS: I will object to what she said.
THE COURT: Overruled.
A. She said, he locked me in the house, he closed the doors, I was beaten. I was never touched in my life. Why do I have to stand here and then she started getting really, you know -- she was hurt, the child was hurt. She was crying. She was crying all the way. Her mother was getting very upset. She was in pain. So --
Q. Mr. Simonelli, did your daughter identify who had done this to her?
A. Yes.
Q. Who did she identify as having done this to her?
MR. DAVIS: I object.
THE COURT: I'll see counsel.
(The following occurred at side bar)
THE COURT: I will hear you, Mr. Davis.

MR. DAVIS: I'm objecting on the grounds it is hearsay.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Your Honor, I believe that an identification is not hearsay. I think it is 63(1), whatever the last letter is on the page, when identity is at issue in this case. Identity of the attacker in this case is in issue by virtue of Rule 55 showing motive, plan, intent, to prove the identity of the person who committed the murder and it was done purposefully.

THE COURT: I'm satisfied that the proffered statement is admissible under the provisions of Rule 63(4)(b). Objection is overruled.

(Whereupon, the side bar ended)

BY MR. TALASNIK:

Q. Mr. Simonelli, while your daughter was in this emotional state as you have described and while she told you what had happened to her, did she identify the person who had done these things to her?

A. She told me it was --

Q. Who did she say had done this to her?

A. Richard Highlander.
Q. Mr. Simonelli, did you determine it appropriate to take photographs to show the injuries that your daughter had received on the 16th of March?
A. Yes. I took pictures of her after we came back from the hospital.
Q. I am going to show you two items that have been marked S-45 and S-46 for identification. I am going to ask you to look at them and first I want you to tell me whether you recognize what those pictures are.
A. These are photos I took after we came from the hospital.
Q. Do you recognize them as photographs that you yourself took?
A. I took, yes. Yes, I did.
Q. When did you take them in relation to your daughter being treated at the hospital for the March 16th incident?
A. I would say this was approximately six o'clock, 5:30, right after we came back from the hospital and the hospital released her.
Q. That was on the very same day?

A. The same day, we drove back to the house from the hospital and I took the pictures.

Q. Do those photographs in your opinion accurately reflect the way Gloria looked that evening?

A. To me she looked a little worse, but the photos only show what they have to show.

Q. Okay. What specific injuries did you intend to show by taking those photographs?

A. We wanted to get -- we wanted to show the injuries to a judge, yeah.

Q. What injuries to Gloria's body did you intend to show?

A. Really the neck and the broken finger and the bruises above the eye. You can see the bruises on the eye and the side of the face.

Q. As a result of what Gloria told you and who Gloria identified as having caused these injuries, did you yourself do anything to attempt to protect her or secure her in her condominium?

A. The first thing I done was get the phone number and have all the locks changed.

I got in touch with a locksmith. I called the telephone company to change the telephone number. It was a Wednesday and they said the quickest we can change the number was Monday. The locksmith said -- it was about 4:30, five o'clock maybe that happened -- they said the best I can get there is tomorrow afternoon. I said no problem, I'll be here, and I stayed.

Q. Mr. Simonelli, why did you determine that it was necessary to get the locks changed?

A. We were afraid that he had another key. We were afraid --

Q. Who had the key?

A. That Mr. Highlander had another key and we were afraid he would come back and give her more injuries.

Q. Why did you feel it necessary to change the phone number?

A. We didn't want to be harassed by phone calls.

Q. Mr. Simonelli, did you discuss with your daughter whether she would be willing to press criminal charges against Mr. Highlander?

A. Yes.

Q. And what did she say?
A. Definitely she was going to press charges.
Q. Did you do anything with her with respect to actually physically signing or pressing charges?
A. The next day we went -- there was a complaint and we upgraded the complaint. We went to the police station and made a complaint out for the bodily injury he gave her.
Q. Mr. Simonelli, explain to us what you mean by you upgraded the complaint?
A. Well, as soon as she came back from the doctor's, her friend -- one police department turned her over to another police department to driver her in and --
MR. DAVIS: I object to this. It is all hearsay.
THE COURT: Without a foundation, Mr. Talasnik, I agree.
BY MR. TALASNIK:
Q. Mr. Simonelli, did you have anything to do with the decision to upgrade or change the complaint against Mr. Highlander?

A. Yes.
Q. Did this decision come about as a result of talking to your daughter?
A. Well, I read the complaint and I didn't think -- it was watered down. I felt like it was watered down. After I seen these injuries, I said no, you got more than that. This complaint is watered down what they put on it.
Q. So it was after that that you took your daughter to the police station the next day?
A. Yes, sir.
Q. Did you actually accompany your daughter to the police station to sign the new complaint?
A. Yes, I was right there. Me and my wife were right there with her.
Q. Were you there for the signing by your daughter?
A. Yes.
Q. I want to show you a document that has been marked S-44 for identification. I would like you to look at the document and first just tell me if you recognize what it is.

A. It is the complaint.
Q. What is it on that complaint that causes you to recognize it as the complaint that we are talking about here?
A. Well, it says Richard Lee Highlander, his address, Somers Point, and it is the complaint that Gloria Simonelli made and her signature is here.
Q. You recognize her signature on the bottom?
A. Yes.
Q. Were you present for her signing that complaint on the 17th of March?
A. Right.
Q. Charging Mr. Highlander with aggravated assault against your daughter?
A. Right.
Q. Do you know whether Gloria went anyplace else that day after this complaint was signed by you or by her with you present? Did Gloria go anywhere else?
A. Yes.
Q. Yes?
A. I'm pretty sure she went with her mother to the Atlantic City Courthouse to get

a restraining order against him.
Q. You did not go?
A. No. I stood and waited for the locksmith because that was the next day that the locksmith was supposed to come.
Q. Now, Mr. Simonelli, did you determine to stay with your daughter for the next few days?
A. I stood until Sunday.
Q. Why?
A. I was worried about my daughter.
Q. At some point, did you determine to leave to go back home?
A. Well, I had to go to work and I had to get back to work, but my wife stood, my wife stood for the next several weeks.
Q. You left her there while you went home?
A. Yes.
Q. Did you come down at all?
A. I came down on the weekends. I used to come down Friday night and stay until Sunday and then I would leave and go back.
Q. During any of those visits, did you talk to your daughter about this complaint

that she had signed against Richard Highlander?

A. Yes.

Q. Did you ever discuss with her her willingness to follow through and testify against him?

A. Yes. She was determined to testify against him. She said I was never battered around in my life, you never hit me, why does somebody have to come into my house and beat me up.

Q. Mr. Simonelli, I now want you to think a little bit forward to a Sunday evening, the 10th of April, 1988. Do you recall being home that night?

A. Yes.

Q. What happened that night?

A. We received a phone call approximately 11 o'clock, maybe 10 after 11:00, and it was Gloria and she said somebody kicked or banged through my door and broke the thing and they're trying to get --

MR. DAVIS: I object to hearsay again.

MR. TALASNIK: I will lay a

foundation, your Honor.
BY MR. TALASNIK:
Q. Mr. Simonelli, is it you who took the phone call from your daughter or your wife?
A. My wife.
Q. After your wife took the phone call from your daughter, did you and she do anything?
A. Yes. We got dressed and came right down.
Q. Came down where?
A. To Margate, her apartment. She said she was going to call the police.
Q. About what time did you get to Margate in response to this phone call from your daughter?
A. 1:30, quarter to 2:00. 1:30 or quarter to 2:00. It takes me about an hour and 15, 20 minutes. It was night time and I didn't drive that fast.
Q. You left right away?
A. Got dressed and left.
Q. And this would be 1:30, quarter to 2:00 in the morning?
A. Yes.

Q. Would you describe what you found when you got there?
A. The front door looked -- it looked like the front door was forced and it is a French door and the panes of the French door, the wooden part that holds the panes in was broken down, broken right off. I fixed them after that. You can see where the door was like kicked or pushed with something, with a bar, like it was forced.
Q. Did you have occasion to see and talk to your daughter in those early morning hours that would be now the 11th of April when you finally arrived?
A. Yes. She said she was frightened, she was very frightened.
Q. Would you describe her emotional state at the time that you confronted her arriving in those early morning hours?
A. She says, I knew he was going to break in, I knew he was going to break in. She started crying, he was coming to get me. I know he broke the door.
I said, you got the cops. Me and your mother will stay. Don't worry about it.

Then we calmed her down a little and she said I can't and then I said don't worry and I brought a piece of pipe with me. I said if he comes in, I'll take care of him.

Q. What if anything was done with respect to notifying the police?

A. She called the police.

Q. And was this done in your presence?

A. I think she called the police before I got there. The police were there already before I got down there, I think.

Q. After that incident, did you continue to see your daughter through the month of April on a regular basis?

A. I left my wife down there. My wife stood down there again.

Q. She stayed again?

A. Yes. I came back, called back into work and then I came back the following weekend and stayed a whole week down there and then my wife stood down there.

Q. I want you to think a little bit further to the weekend of the 23rd and 24th of April.

Do you recall that weekend?

A. Yes.
Q. Did you come to Margate to see Gloria again that weekend?
A. Yes.
Q. Do you remember what day you arrived and how long you stayed?
A. I'm pretty sure I arrived Friday right after work. We got dressed and went down Friday evening and stood until Sunday, which would be the 24th.
Q. A few days before that weekend, had you gotten any unusual phone calls at home regarding your Gloria and Richard Highlander?
A. I got a phone call from a lawyer that says he was going to sue me. I said that's no problem. Mr. Highlander was going to sue us and I said my insurance company would take care of that. I said, you call my insurance problems. Number one, he jumped my daughter off the staircase and I got witnesses, I told him. I got my daughter as a witness. If you want to sue me, I said to him, call my insurance company. I will give you my insurance company's number.
Q. Mr. Simonelli, what did you do that

last weekend with Gloria down in Margate?

A. We had dinner together. We took her to work. When my wife was down there, she used to take her to work every night and when she come home, we waited for her. On Sunday we had dinner and then Sunday night we said, why don't you come home and she said no, one of the girls is leaving and we are going to have a dinner for her. She said I like this person, I want to go to the dinner. I want to go to dinner with her. She said, I'll be all right.

I said, are you sure you're going to be all right and she said I'm pretty sure I'll be all right. I asked her if she wanted to come back home for a couple of days and then, you know, you spend it up with us.

She said, I'm obligated to go to this luncheon or dinner for the girl that was leaving work, for the girl.

Q. This would have been Sunday, April 24th?

A. Yes. Sunday, April 24th.

Q. What time did you leave your daughter's place that Sunday?

A. 2:45, quarter to 3:00, around that time. We had something to eat first. She had cooked a little and we left.

Q. That's 2:45, quarter to 3:00 in the afternoon?

A. Approximately, yeah.

Q. Did you ever see your daughter again?

A. No. Not until she was laid out.

Q. How were you notified that your daughter had been shot?

A. I received a call from the Lavallette Police Department, which is my precinct, and they said there will be a police officer at your door. This was approximately one o'clock in the morning. I went to the door and I said what happened and he shook his head. The police officer happened to know us and happened to know Gloria and went to school with her. He said she was shot and killed.

I went to the phone and called Margate. I said, is my daughter dead, and they said yeah then I said it is your fault and then I hung up the phone.

Q. Then where did you go?

A. My wife was there and I told her and

my family came running right over and we stood there until the following day. Then I had to bring a doctor for my wife. My wife was upset and I brought a doctor. He came the next morning and all our friends came over. We called them that something happened and all the neighbors had come in and everything. They started coming right in.

MR. TALASNIK: I have no further questions of the witness.

THE COURT: Mr. Davis?

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Simonelli?

A. Yes, sir?

Q. Do you know when your daughter commenced or initially met Mr. Highlander?

A. The recollection is late November or early November. That's roughly.

Q. In fact, the only thing you can base it on is what your daughter told you?

A. Not really. I mean, he was there. I would have met him when I was down my daughter's house every weekend.

Q. Every weekend, but if he was there

even every week, you wouldn't necessarily have seen him?

A. No.

Q. And if she was seeing him at different areas, different bars, different casinos, you would not have seen Mr. Highlander, would you?

A. No.

Q. And, in fact, do you know when your daughter commenced living with Mr. Highlander?

A. November.

Q. November?

A. That's the nearest recollection I can think of. Maybe early November is the recollection I have.

Q. November of '87.

A. Yeah.

Q. Now, to the best of your recollection, when they commenced to live together, they were living as man and wife, were they not?

A. No. I don't know that.

Q. You don't know that because your daughter didn't tell you everything, did she?

A. She told me everything.

Q. She didn't tell you how she was receiving certain monies, did she?

A. That's a lie.
Q. You just answer the question. Did she tell you how she was receiving certain monies?
A. No.
Q. Now, you say that Gloria bought this condominium?
A. Yes, sir.
Q. And you further indicated that you had to be on the mortgage papers because her $17,000 per year would not allow her to carry that mortgage.
A. That's before she had the cigarette girl job.
Q. I didn't ask what job. I said $17,000 she was making, regardless of the job, as far as the financial institution was concerned was not sufficient to allow her to carry the mortgage, was it?
A. Yes, sir.
Q. Therefore, you had to go on the mortgage?
A. Right, sir.
Q. You had to lend her money to buy that condo.
A. Yes.

Q. Your son had to give her some money to buy that condo.
A. Yes, sir.
Q. Now, what was the mortgage per month.
A. When she bought it, three years, the mortgage started out at 435 a month.
Q. What type of vehicle did she have at that time?
A. A Camry I think they called them. A Camry.
Q. What year was it?
A. Mine -- it was a year less than mine. Hers had to be a '79. Mine was an '80.
Q. '79 Toyota?
A. Yes.
Q. Did she have a telephone?
A. Yes.
Q. Whose name was it in before you had it changed last time, whose name was it in?
A. Hers -- mine.
Q. It wasn't in her name because she couldn't afford to carry it.
A. No. Because she didn't have to put money up to buy -- for the telephone. You have to put a deposit. She didn't have to put

a deposit.
Q. She wouldn't have to put the initial deposit?
A. Yes.
Q. Is that because she didn't have the deposit to put up?
A. She had the deposit.
Q. After Mr. Highlander commenced living with your daughter, did you notice certain gifts your daughter was receiving?
A. No.
Q. Did you notice any fur coats?
A. Yes. She had the fur coat eight, nine months before she met Mr. Highlander. She bought that fur coat, bought it on a lay-away in January of the year and a half before she met this gentlemen. She bought it --
Q. Finish it. You can finish.
In fact, she had a fur coat laid away and it was after she met Mr. Highlander that she got that fur coat out, isn't that a fact?
A. No. She made the payments. We're talking about January of '87 into November of '87. She was making ever payment in certain

months.

Q. Did she go to Denver, Colorado?

A. Yes. He was going for a hair transplant and he needed her.

Q. Did she go?

A. Yes. He asked her because he was afraid he was going to get sick. The doctor said to take somebody with him.

Q. Did she go to California?

A. Yes.

Q. Now, you indicated the first time you saw Mr. Highlander was around about Thanksgiving.

A. Yes. To my earliest recollection.

Q. And that was in Atlantic City.

A. I think so -- no, Margate.

Q. You went out to dinner that night, didn't you?

A. That day, in the afternoon it was.

Q. That day? Did anyone else come down to Margate with you?

A. My sister-in-law and brother-in-law.

Q. Isn't it a fact that they stayed at the Atlantic Palace on Mr. Highlander?

A. Yes, sir. I also stayed at the

Tropicana.
Q. Did Mr. Highlander supply you with the limousine?
A. I don't know if he paid for it. Yes, he did.
Q. At that point your daughter appeared to be quite happy?
A. No.
Q. Did she complain to you at that time?
A. Not exactly at that time, but right after it.
Q. When she complained to you right after, did you do anything?
A. I said try to work it out, see what you should do.
Q. What do you call right after?
A. Right around Christmas time.
Q. Just before Christmas time?
A. Around Christmas, around then.
Q. In fact, on Christmas Eve she came to your house with Mr. Highlander?
A. Yes. Because my son was in from California.
Q. You allowed Mr. Mr. Highlander and your daughter to share the same bedroom?

A. Wait a minute now. Everyone was asleep. Let's not twist it the way it sounds. The kids were all sleeping, which I call kids to my age. They were all sleeping, so we watched the midnight mass and they were all you out and I said I'm going to bed and they said okay, we'll go to bed, too, and I have no recollection that he slept with my daughter on that date.

Q. At that time there didn't appear to be any problems, did there?

A. I have no idea. It wasn't done right there. Christmas there is never no problem -- yes, sir, there was problems, I'll tell you. My son was very unhappy the way he was talking. We were at the dinner table and he was very unhappy with him.

Q. In fact, you and Mr. Highlander had a conversation at that time, didn't you?

A. We probably did.

Q. And he appreciated how you were treating him and he indicated to you how much he loved your daughter, is that not a fact?

A. That's just a word with some people.

Q. Mr. Simonelli, it may be just a word,

but I'm asking you is, it not a fact that the words were used?

A. They probably were. I won't deny it. I don't remember it, to tell you the truth.

Q. At any time during the time that Mr. Highlander was in your home during that Christmas holiday, did you ask him out?

THE COURT: I'm sorry?

Q. Did you ask him to leave your home?

A. No.

Q. Did you ask him to leave your daughter alone?

A. No.

Q. Now, you've indicated that on March 16th you received a telephone call?

A. Yes.

Q. Now, directing your attention to about two weeks before March 16th, the first few days of March, do you recall yourself and your wife coming down to see your daughter and Mr. Highlander being in the house?

A. Yes, we might have. We were down there every weekend. Days I'm not good at.

Q. Do you know if, in fact, at that time your wife asked Mr. Highlander to leave?

A. She may have.
Q. You weren't there, were you?
A. No.
Q. In fact, you weren't part of the conversation at all, were you?
A. No.
Q. Isn't it a fact that Mr. Highlander left?
A. No. He was there when I got back.
Q. Isn't it a fact that he left the house at that time?
A. He left and came right back. He went for a walk. I had come back from work and went to play a couple of numbers.
Q. Didn't he leave for a few days at that time?
A. I don't recall. I'll tell you the truth, the God's honest truth.
Q. And you left your wife at the house at that time, didn't you? You went back to Lavallette?
A. I may have, yes.
Q. Now, on March 16th, you've indicated you received a telephone call, is that true?
A. Yes.

Q. When you arrived at Margate on that day, is it not a fact that Mr. Highlander was no longer in the premisis?
A. Yes.
Q. In fact, he had been removed from the premisis the day before?
A. Now, wait a minute. His clothes were still there. His friend came to pick his clothes up. Physically he wasn't there, but his clothes were.
Q. When I'm speaking in terms of Mr. Highlander, I'm speaking about him as a person.
A. He wasn't there.
Q. He had left?
A. He was gone. That was the day of the assault.
Q. The date of this alleged -- did you see the assault?
A. No.
Q. All you know is what Gloria told you?
A. Yes.
Q. But you didn't see any of it?
A. No.
Q. Pardon me?

A. No.
Q. You don't know what precipitated it, if there was an assault, do you?
A. No, but the doctor called us.
Q. Will you answer the question?
A. No I don't.
Q. Do you know what precipitated this? Pardon me?
A. No, I don't. I didn't see the assault.
Q. You don't know who was involved in this so-called assault?
A. I got to take my daughter's word for who was involved.
Q. Now, your daughter, when you arrived, Mr. Simonelli, your daughter already signed a complaint, hadn't she?
A. Yes.
Q. And she had signed this complaint where, do you know?
A. Margate.
Q. Margate Police Department?
A. Right.
Q. And you came down the next day.
A. No. I came down the same day.

Q. You came down the same day?
A. That's right. I was down the 16th, the day of the alleged assault.
Q. Did you go to the police department immediately or did you go the next day?
A. I went to the hospital. I took my daughter to the hospital.
Q. Did you go to the Margate Police Department that day?
A. After we brought my daughter from the hospital, then the next day we went to the police station.
Q. So you went to the police department the next day?
A. Right.
Q. Why did you go the next day?
A. Number one, we had -- the kid was sick -- hurt. I sat down and read the report and I thought it was watered down too much, and I said this is nothing. This is like somebody spit at you or cursed you. I said look at how you are. You're beat up. We have -- we got the hospital records, the doctor's statements of how you came into his office and then we went up and raised -- we updated the

complaint.
Q. You upgraded the complaint?
A. Yes.
Q. Is it fair to say that when your daughter went to the police department, she on her own signed a certain complaint, disorderly simple assault?
A. It's true. I think she was harassed into that by a lieutenant.
Q. You're saying now that -- I'm going to call the name and tell me if I'm wrong -- Lieutenant Boake?
A. Yes.
Q. Are you indicating that Lieutenant Boake of the Margate Police Department harassed your daughter into signing a disorderly complaint?
A. Well, I can't go as far as saying harass, but he did it. The next day, he said you can't upgrade this, this is nothing. I said take a look at her face, a sprained neck, a busted finger, you want me to go to court with this thing? He said, it is a domestic thing, no problem. I said, let the prosecutor worry if it's a domestic thing and this is the

way -- my daughter wrote the report, I didn't.
Q. Did you read your daughter's report?
A. Yes.
Q. Did you read how your daughter broke her finger or injured her finger? Did you read that? Did you read it? What does it say?
I didn't ask you to read the complaint. I said, did you read the report how your daughter indicated how she injured her finger.
A. No. I don't remember. I can't remember every little thing.
Q. You told me a minute ago you remembered reading how she injured it.
A. I made a mistake.
Q. What was the mistake? You didn't read it or you forgot what it said?
A. I forgot what it says, to tell you the truth right now.
MR. DAVIS: Could I have a moment, Judge?
Your Honor, could I have this marked for identification?
THE COURT: D-5.

(Below-described document marked Exhibit D-5 for identification)

BY MR. DAVIS:

Q. I want you to take a look at D-5, Mr. Simonelli, if you would, please.

A. All right.

Q. It's got another page. Flip it over.

A. Yes?

Q. Do you know what that is?

A. That's the first complaint.

Q. Is that the complaint that you referred to when you indicated to me you read her complaint?

A. Yes.

Q. Just look at the last sentence. Does that indicate to you how she hurt her finger?

A. Yes.

Q. What does it say?

A. She said she hurt it while going to the telephone.

Q. She said she hurt it by going to the telephone?

A. Huh-huh.

Q. She didn't say anything about Mr. Highlander breakihg her finger, did she?

Pardon me?
A. No.
Q. Now, Mr. Simonelli, you've identified certain checks, receipts and a lease for an automobile. There is no doubt they are all in your daughter's name. But you can't sit there for a fact today and tell us where she was getting her money to pay for those items?
A. She was earning it. Before Mr. Highlander came into the picture, she was paying all her bills. For two years before, on time.
MR. DAVIS: Could you direct the witness to answer?
THE COURT: I know it is difficult, Mr. Simonelli. Listen carefully to the questions and answer only those questions.
Read the last question.
(Whereupon, the reporter read the pending question)
A. No.
MR. DAVIS: That's all, Judge.
THE COURT: Mr. Talasnik?
MR. TALASNIK: Thank you.
REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Simonelli, you told us that when the condo was originally purchased, that you determined to put it in your name. At the time Gloria -- I think you were saying she was making $17,000 a year?

A. Yes.

Q. I believe you also testified she changed jobs?

A. Yes.

Q. After the condo was bought, she became a cigarette girl?

A. Yes.

Q. Do you know from talking to her why she changed from the job she had managing the gift shop to becoming a cigarette girl?

A. Her income would almost double. Her income almost increased -- almost doubled her income.

Q. You've indicated that during the last couple of years of her life that you maintained a close relationship with her in terms of visits?

A. Yes, sir.

Q. Would that include discussions about

her finances?
A. Yes, sir.
Q. Would do you base your testimony on that by changing from the gift shop manager to cigarette girl that her income nearly doubled?
A. Well, number one, she paid me completely back all my money that I lent her. She paid her brother back her money. She financed some money to her brother. This was all her money. She was still paying the condominium, her dues to the condominium fees, and paid us all back in the year and a half that she went from what you call gift shop to the cigarette girl.
Q. Now, with respect to paying you back for monies advanced to help on the downpayment for the condominium, was this paid back to you before she began to date Richard Highlander?
A. Almost a year before. Way before.
Q. With respect to the money that was advanced to her by her brother to help with the downpayment and the fact that she paid all of that back, was that done before she began to date Mr. Highlander?
A. Yes, because my son also bought a

condominium two doors down from Gloria and that's when she gave him his money back. Then he bought a house in January and she lent him money back in January. She paid back the money a year before for him to buy the condominium. Then in January of '88 he bought a house and she lent him money to buy the house, for him to put a downpayment down.

Q. Now, with respect to the mink coat that has been referred to, do you recall any discussions with your daughter about arranging for the purchase of that coat before she met Mr. Highlander?

A. The day she went out and got it, it was an estate sale, Steinbach's had an estate sale and she said I picked up this fur coat. She said I just put a downpayment and I said you're working hard and you deserve it. She put a downpayment to put it away in lay-away.

Q. From the time that she changed jobs to become a cigarette girl, nearly doubling her income as you have described for us, did she ever ask you or your son for money?

A. No.

Q. Did she ever complain of needing money

for expenses?
A. No. She wanted to lend me money.
Q. Now, in response to one of Mr. Davis' questions, you began an answer that your daughter never had money troubles until she ran into Highlander?
A. That's correct.
Q. Would you describe what you mean by that?
A. Number one, my daughter had a funny habit. We set up -- the mortgage payment was due the 1st. She used to give me the money or give me a check and give half in cash and that would be on the 20th or 22nd. In fact, we were almost a month ahead until somebody stepped into the picture and then she didn't make payments, there was no -- in fact, the day when she passed away, I had two months payments I had to make out of my own because she was in a hole up to here all of a sudden.
Q. This falling into a hole was only after she began to date Mr. Highlander?
A. Yes. And her credit cards were high when she died.
Q. How would you know that her credit

cards were current until she began to see Mr. Highlander?

A. I had to lend her money to meet the amount once of the American Express payment. This was after she met Mr. Highlander.

Q. Okay. You were asked questions by Mr. Davis about your daughter appeared to be happy when she was with Mr. Highlander, focusing on the end of 1987 and the first month or so of 1988. I believe you began to answer that, no, that was not true, that she didn't always appears happy.

Would you describe what you mean by that?

A. We had met them -- she wasn't Gloria. She wasn't my daughter. Everything was, how are things going and she -- I said what's your problem, you know? I said, well, if you're not getting along, separate from each other for a while and see what's happening. See if you can go away from each other for a while and see if anything is wrong. She says, I'll be all right. That was her favorite saying, everything will be all right, I'll be already.

Q. All right. Did you perceive that

conduct to be different than the way she was maybe six months earlier?

A. Definitely, yes.

Q. How was it different?

A. From a happy girl, she became a sad girl.

Q. You were asked questions about Christmas and about Mr. Highlander being there Christmas and you never asked him to leave; is that right?

A. No.

Q. Was there anything negative, however, that did occur there?

A. My son was very unhappy. He was -- he was talking a lot of bigot talk and we're not used to that kind of stuff. We're brought up in a different environment and this was that and this and that and my son said I don't have to listen to this. I said John, have patience, I know it is not right.

Q. During the visits you had with Gloria, between, let's say, the first of the year 1988 and the time that you visited with her after the assault, so we are talking January, February and early March of 1988, did you ever

have any discussions with your daughter about how she felt about Mr. Highlander?

A. No. I never sat down. My wife usually used to do that. Mother and daughter thing.

Q. When you would see her during this first few months of 1988, how did she appear to you?

A. She wasn't happy. It is hard to explain, but you know a -- when you know a person for 30 years and you bring them up and everything, and then all of a sudden you see their -- you know, it was like she was sick. A couple of times she was sick and she was in this -- it is hard to explain. When it's your own child, you know how their emotions are changing, that they are not happy.

Q. You were asked questions about the assault involving your daughter and Mr. Highlander; correct?

A. Yes.

Q. And you admit that you were not physically present to see that assault?

A. Yes.

Q. What is the basis of your information

about the assault?
A. The doctor's office called us. The doctor's office called us and said --
MR. DAVIS: I object to what the doctor's office said.
THE COURT: Sustained.
BY MR. TALASNIK:
Q. After visiting with the doctor, did you then see your daughter?
A. Yes. We went right to her apartment because we went to the doctor's office first.
Q. At the time did she explain to you what had happened? What was her emptional state?
A. Hysterical, she was hysterical.
Q. At the time she explained to you what had happened, did she appear to be capable of calm, rational fabrication?
A. Could you repeat that? Irrational? No.
Q. At the time that she was explaining to you what had occurred, what was she doing physically? How was she acting?
A. She was -- she showed me everything that happened, you know -- up the stairs, he

jumped down the stairway, he was going to kill himself, he took the keys and how he hid the keys on her, closed the door.

Q. And her emotional state you described to us?

A. Hysterical, she was hysterical.

Q. Did she tell you that at one point she had told him that she wanted him to leave?

A. Yes.

Q. Did she tell you --

MR. DAVIS: I object to the leading questions again.

THE COURT: I haven't heard the second question yet, but the last one was, Mr. Talasnik.

BY MR. TALASNIK:

Q. What sorts of information did Gloria give you about how the injuries were caused to her face and her back?

A. He punched her. She told me he punched her in the eye and then he punched her in the back.

Q. Okay. What information, if any, did Gloria give you about whether the phones were tampered with in any way?

A. He took the phones out. She said he took the phones out.
Q. What information did she give you about the doors and the keys and her ability to leave?
A. She has dead bolts and the dead bolts -- he locked the insides of both doors and had the keys and she couldn't get out.
Q. All of those things were bits of information that she gave you?
A. She told me.
Q. I now want you to look again at this document that Mr. Davis showed you that's marked D-5 for identification. The document which you have identified as being her statement.
A. Her first statement, yes.
Q. I would like you to begin reading from there.
A. Beat me up by the face, face, back and fists in the head and in the eye.
Q. Continue.
A. Then took the phone out of the outlet and dead bolted the doors and hid the keys.
Q. And beyond that?

A. I can't make it out -- also skinned me -- I can't read that.
Q. Also something?
A. Also something in the morning -- I'm a little nervous.
Q. Okay. And that is from the statement that Gloria had already given by the time you got there?
A. Yes.
MR. TALASNIK: I have no further questions, thank you, your Honor.
THE COURT: Mr. Davis?
MR. DAVIS: Just a couple of questions.
RECROSS-EXAMINATION
BY MR. DAVIS:
Q. Mr. Simonelli, are you telling us today that your daughter was making approximately $34,000 as a cigarette girl?
A. Approximately.
Q. You told us your daughter was dead bolted into the apartment and the keys were hidden?
A. Yes.
Q. Do you know how she got out of the

apartment?
A. I think she found the keys, if I'm not mistaken.
Q. And you also told us on this same evening that Mr. Highlander attempted to commit suicide?
A. I don't know if he committed suicide. He jumped out -- what she told me, he jumped off the balcony.
Q. Didn't you indicate he tried to commit suicide?
A. I don't think that's trying to commit suicide. It was only eight foot high.
Q. Isn't that the words you used?
A. No. I never said that.
Q. You never said that? Your daughter never told you that?
A. He says -- my daughter said he was going to kill himself, not commit suicide.
Q. So on this evening he was going to kill himself?
A. You didn't say my daughter said that. You said I said it.
Q. Okay. Did your daughter tell you he was going to kill himself?

A. Yes, and he jumped off the eight foot balcony.

MR. DAVIS: That's all.

MR. TALASNIK: Nothing further.

THE COURT: Thank you, Mr. Simonelli.

(Witness excused)

THE COURT: You may call your next witness.

MR. TALASNIK: The State calls Gloria Simonelli.

GLORIA SIMONELLI, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mrs. Simonelli, would you tell us where you live?

A. Five Westmont Avenue, Lavallette.

Q. Who do you live there with?

A. My husband.

Q. Is your husband John Simonelli?

A. Yes.

Q. Mrs. Simonelli, are you related to the deceased in this case? Gloria Simonelli?

A. Yes, I'm her mother.

Q. The two of you have the same first name?
A. Yes. Her name is really Gloria Ann. My name is Gloria Margaret. We called her Gloria Ann.
Q. Mrs. Simonelli, during the latter part of 1987, did you learn that your daughter had begun to date a man by the name of Richard Highlander?
A. Yes.
Q. Were you ever to be introduced to Mr. Highlander?
A. Yes.
Q. Do you see the man in the courtroom who was introduced to you by your daughter as Mr. Highlander?
A. Yes.
Q. Would you point him out, please?
A. Right there.
THE COURT: Let the record reflect that the witness pointed to the defendant.
BY MR. TALASNIK:
Q. Ms. Simonelli, during the latter part of 1987, how often would you see your daughter?

A. Quite often. Mostly every weekend maybe, sometimes we would miss her on the weekends, but we would see her. We were very close. We spoke on the phone quite often.
Q. Do you feel over the course of the years you developed the ability to read your daughter pretty well?
A. Oh, yes.
Q. Do you recall the first time that you saw her with Mr. Highlander?
A. Yes.
Q. When might that have been?
A. It was Thanksgiving day.
Q. Did you see your daughter with Mr. Highlander on occasions after that as well?
A. Yeah, a few times. Not too many.
Q. How did your daughter appear with Mr. Highlander particularly, let's say November, December of 1987?
A. She was like sort of down. It wasn't Gloria.
Q. What do you mean it wasn't Gloria?
A. She was always very bubbly; and she was always very down, quiet. She wasn't like she was, talkative.

Q. I want you to think now on into the beginning of 1988 and how did your daughter appear during January, February, around in there?
A. She was getting worse. You know, she wasn't herself, I can honestly say that.
Q. Did you talk to her about it?
A. Yes, I did. She never really said anything. She wouldn't say anything to me. She said -- I would ask is everything all right and she would say, yes, it was. But I knew, just looking at her. She looked very unhappy.
Q. In late February, perhaps into early March of 1988, were you able to make a connection between what you were seeing in your daughter and Richard Highlander's presence in her life?
A. Yes, I could see the difference.
Q. How were you able to make that connection?
A. Well, if I was in their company and he would say something, her eyes would just go up like that, so she was annoyed.
Q. Anything else?

A. No, not that I can think of.
Q. I want to focus your attention to approximately the beginning of March of 1988. Did you have occasion to be in Margate and to talk to Mr. Highlander about the situation?
A. Yes. On Saturday.
Q. Tell us about that.
A. He had come home from work and we were sitting there and I waited awhile and then I said to him, Gloria wasn't feeling well, she didn't look good and she told me she was very unhappy, that she wanted him out and that's when I told him to leave. I don't want to see my daughter sick. She's very unhappy and I don't want her to be sick. I said I would like you to leave.
Q. What happened?
A. Well, he said he would leave and he left that night.
Q. Did you stay with your daughter the balance of that weekend?
A. Oh, yes, I did.
Q. Did Mr. Highlander return?
A. Yes. He returned maybe about Tuesday or Wednesday, I don't know, yes.

Q. And what happened when he returned?
A. He said he wanted to speak to her. He said he didn't want to speak to me, wanted to speak to Gloria.
Q. Did that take place?
A. Yes. He went outside, came with a truck, went into the truck and she went out with him and they spoke.
Q. What happened then?
A. They came back. She hadn't said a word. He did all the talking. He said that he was coming back and Gloria wanted him. She never said a word. I don't know what he said to her, but she never said a word. She just kept very, very quiet.
Q. What did you determine to do then?
A. I didn't know what to do. I was in a mist. I said finally, you have to tell me what you are going to do, if you are going to stay or what. She didn't say anything and he did all the talking, that he was staying, everything was all right.
Q. Did you then leave?
A. Yes. I don't know -- I didn't leave that night. I think I left the next day, if I

recall.
Q. Mrs. Simonelli, I wanted you to think forward now from where we were just speaking to the morning of March 16th, 1988, that Wednesday. Where were you that day?
A. I was at home.
Q. And did you receive any kind of a phone call while you were home?
A. Yes. I got a call from Dr. Paparone. He called me.
Q. Who is Dr. Paparone?
A. He was her physician when she was ill. She didn't know where to go that day, but she went to his office.
Q. What do you mean he was her physician?
A. Dr. Paparone.
Q. Whose physician?
A. Gloria's, I'm sorry.
Q. You got the phone call from Dr. Paparone and that was in the morning of the 16th?
A. I don't think it was morning. I think it was maybe near noontime, maybe a little past noontime.
Q. Maybe noon, a little after?

A. Yes, somewhere around there.
Q. Mrs. Simonelli, maybe if you sat closer to the microphone we would be able to hear better.
A. I'm sorry.
Q. In response to that phone call from Dr. Paparone from Margate or from Ventnor -- do you know where his office is?
A. I think it's Ventnor.
Q. In response to that phone call from your daughter's doctor, what did you do?
A. Well, I called my husband at work and he came home immediately and we went right down to Gloria's. In fact, we were going to the doctor's office, but when we got there, Gloria was gone already.
Q. Why did you go to the doctor's office first?
A. The doctor told me to meet Gloria there, to pick her up. But she had gone already when we got there.
Q. Did you or your husband speak to the doctor?
A. The doctor was busy with a patient. The nurses spoke to us.

Q. Was there some discussion about your daughter's condition?
A. No, not at the time. They had told us she had gone home and that was it and she had to go to the doctor's for her finger.
Q. Did you then go with your husband to Gloria's home?
A. Yes. When we got there, Gloria was there. She had just gotten in.
Q. I want you to describe what your daughter looked like when you saw her.
A. She had a black eye. She was all bruised and her finger -- we didn't know at the time whether it was broken or not because we had to go to the hospital because when we went to the house, we brought her to the hospital and that's when we found out her finger was broken.
Q. I want you to now describe how your daughter was acting when you arrived home and saw her in this physical condition?
A. She was hysterical. She had told us no one is going to do this to me. She said my parents never hit me like this. Why should he.

Q. Can you tell us in more detail what you mean by she was hysterical?
A. Well, what she said to us was that he had locked her -- he locked all the doors in the house --
MR. DAVIS: I object. It is not responsive.
BY MR. TALASNIK:
Q. Let me back up. You told us that your daughter was acting hysterical.
A. Yes.
Q. Explain to us what you mean by the word hysterical. What did you actually see about her that lets you conclude that she was hysterical?
A. She was very excitable. You know, she was very emotional. She was all upset. I mean, you couldn't talk to her. She was so upset about everything, she was talking so fast.
Q. While in this excited and emotional state, did she tell you what had happened to her?
A. Yes.
Q. What did she say had happened to her?

A. She had told us that Rick had beat her, had hit her.
Q. Did she identify who she meant by Rick?
A. Who she meant by Rick? Rick Highlander -- Rick.
Q. Okay. After hearing from your daughter and seeing her condition and the physical injuries, what did you and your husband do?
A. We hugged her and kissed her and we didn't know what else to do. And then we had to go to the hospital to have her finger x-rayed.
Q. Did you remain with her at the hospital?
A. Yes. We stayed until she was through. They gave her head x-rays and everything.
Q. Did you bring her back home later that day or evening?
A. Yes. We took her back home. It was evening by the time we got home.
Q. Now, did your husband determine to take photographs of her?
A. Yes -- no. She insisted on that.

Q. She did?
A. Yes. She insisted she wanted photos.
Q. I'm going to show you two items that have been marked S-45 and S-46 for identification. I want you to look at them and simply answer the question whether you recognize what they are.
A. Yes. I recognize them.
Q. What do you recognize them to be?
A. I recognize them to be -- that's my daughter and she was beat up.
Q. The photographs appear to depict the way your daughter looked after you got her home from the hospital that night?
A. That's right.
Q. Was a decision made to take any precautions with respect to security in her condominium building?
A. Oh, yes.
Q. What was decided?
A. We decided to change the locks and change the telephone number.
Q. Why?
A. We figured she would be bothered by it because he had threatened her many times.

Q. Did you and your husband stay with her that night and the next day, the 17th of March?
A. Oh, yes.
Q. What did you and your daughter do on the 17th of March, the next day?
A. We went to the court in Atlantic City and we got a court order for him to stay away from her. She filled out the papers for it.
Q. You went with her to Atlantic City?
A. Yes, I went with her.
Q. And do you recall her receiving that court order?
A. Yes. She filled out the papers that day.
Q. During that day, were you aware that she also went to the police station with her father to sign an upgraded criminal complaint?
A. Oh, yes, yes, I remember.
Q. Did you have an occasion to discuss that with her before or after it was done?
A. Before.
Q. In that discussion with her, did you talk to her about whether she was going to be willing to go through with it and actually

testify in a criminal court against Richard Highlander?

A. Oh, yes. She was gung ho for it. She said she was going to do it and no one was going to stop her.

Q. How long did you continue to stay with your daughter before returning home?

A. Oh, I think I stayed there a good two to three weeks.

Q. Why did you stay there?

A. I didn't want her to be alone. She was terrified. She was frightened. She didn't know what she was going to do if he was going to come back because many times he had said he would hurt the family or, you know, and she was worried about that. So I stayed with her.

Q. Well, now, Gloria was employed at this period of time, wasn't she?

A. Yes.

Q. What kinds of work was she doing?

A. Cigarette girl.

Q. What did she do about her job for the first couple of weeks after the incident?

A. Well, she had told security where she

works about it and they said they would watch and he wasn't allowed into the place while she was working.

Q. Did she go back to work the very next day?

A. No, no. She may have stayed off the whole week and then went back, something like that.

Q. What about --

A. She was all bruised and she waited until the bruises disappeared.

Q. What about transportation to and from her job?

A. She used the car. But the security guards used to walk her down to her car at night.

Q. Now, where was your husband during this period of time?

A. He was at work.

Q. What that was back in Lavallette?

A. Yes, Lakehurst, New Jersey.

Q. Did he could by on the weekends while you were staying with your daughter?

A. Yes. He would come every weekend while I was staying there, yes.

Q. Now, I want to move you forward a little bit to a Thursday, the 31st of March, 1988. Would you still have been staying with your daughter on that day?
A. No, I don't think so.
Q. Well, do you remember ever going to court with your daughter in Atlantic City?
A. Yes, I did. I did go to court with her. I didn't know the date.
Q. What do you remember about going to court with your daughter in Atlantic City?
A. Well, what can I remember? She went up and testified and told what was done to her and everything and then she got her court order for him to stay away from her.
Q. Well, now, was this a hearing -- was this a hearing that was conducted on the very day that you first took her to Atlantic City?
A. No. This was one where she went up in front of a judge and she told her story and then she had to go back.
Q. All right. Now we are talking about the second time when she had to go back?
A. Right.
Q. Did you go with her to court that day?

A. Yes.
Q. Was there a judge there?
A. Yes.
Q. Was Gloria there?
A. Yes.
Q. What about Mr. Highlander, was he there?
A. Oh, yes, he was there.
Q. He was in the courtroom?
A. Yes.
Q. Did your daughter have to take the witness stand like you have now?
A. Yes, she did.
Q. She was put under oath?
A. Yes, she was put under oath and she told the story, what had happened to her.
Q. Was Mr. Highlander in the courtroom to hear your daughter tell what had happened to her?
A. Yes.
Q. Did she identify in the courtroom the person who had assaulted her?
A. Yes.
Q. Who did she identify as the assaulter?
A. Richard Highlander.

Q. The same one you identified in here earlier?
A. Yes.
Q. Did the judge make a ruling that day?
A. Yes, that he was to stay away from her.
Q. Was Richard Highlander still in the courtroom to hear the judge make that order?
A. Yes, because we were the last to leave. They walked us down, they escorted down both Gloria and I and he was still in the courtroom when we left.
Q. Okay.

Sometime after this hearing where Gloria testified and Rick was there, did you return home?
A. No. I think I stayed. I stayed.
Q. Did you stay a few days after that?
A. Yes.
Q. And then ultimately you returned home?
A. Yeah.
Q. I want to now move you forward a little bit again, this time it would be to Sunday night, April 10th, 1988.
A. Yes? I think I was there --

Q. Do you remember getting a phone call at home that night?
A. Yes.
Q. Had you been to see Gloria earlier in the day?
A. I don't know if it was the day before or that day -- that same day that I had come home -- I don't really remember which day it was.
Q. But do you remember getting a phone call late Sunday night on the 10th?
A. Yes.
Q. Did you recognize the person on the phone as being Gloria?
A. Yes.
Q. Would you describe how she sounded on the phone?
A. She was very, very upset. She said someone tried to break into her house. And they knocked the door. She said she had just closed the lights, just put her head on her pillow and somebody tried to get in and she told us she was going to call the police or had called the police and she was very, very upset.

Q. She sounded upset on the phone?
A. Yes, she was very upset.
Q. In response to that call, what did you and your husband do?
A. We immediately got dressed and went down to see her. We went to stay with her.
Q. How did she appear when you arrived?
A. She was shaken when we got there. She was all shaking.
Q. What did she say while in that condition?
A. She said she knew it was Richard Highlander that tried to get in. She had --
Q. Did you again determine to stay with her for some days?
A. Yes.
Q. How come?
A. I didn't want to leave her alone because I knew she was upset.
Q. Mrs. Simonelli --
A. She wanted me there, in fact.
Q. She asked you to stay?
During the time you had stayed with her up until that evening that you have told us about, did you ever talk to Gloria about

whether she would be willing to follow through on the criminal charges and testify against Richard Highlander?

A. Oh, yes. She wanted to. She just wanted to. That's just how she felt. I'm going to do it and I don't care. I'm taking him to court.

Q. What about after you returned to Margate in response to her phone call on Sunday night, the 10th of April, and you say you stayed a few more days. During those few days, did you have a chance to talk to Gloria about the criminal charges that she had brought?

A. Huh-huh. We spoke and she told me she definitely wanted him to go to court because she didn't want him to do it to anyone else.

Q. At some point after this incident, did you then again return home?

A. Yes.

Q. I know want to bring you forward again to the weekend before Gloria died.

A. Yes?

Q. Specifically the 23rd and 24th of April. Did you come down again to visit with

Gloria that weekend?
A. Yes, we did.
Q. What sorts of things did you do?
A. Well, John used to do a lot of little things around the house for her, fixing things and things like that.
Q. How did Gloria appear that weekend?
A. That weekend she was -- she was a little happier than she had been. She was starting to come around, let's say. She was more like herself. She had --
Q. Was there any talk about Mr. Highlander or that situation?
A. No, no.
Q. Did you discuss with her her coming back with you that week?
A. Yes, I did. When I was leaving, I said why don't you come home with us and she said no, because some girl was leaving where she was working, they were having a luncheon and she said she was going to go.
Q. Do you remember about what time you left Gloria?
A. I would say we left something like 2:00, 2:30 Sunday afternoon.

Q. When was the next time you saw your daughter?
A. When she was laid out.
MR. TALASNIK: No further questions, your Honor.
THE COURT: Mr. Davis?
MR. DAVIS: I'm waiting for the witness to get herself together, Judge.
MR. TALASNIK: Your Honor, there was one area that I neglected to cover and I would like to be able to do that before turning the witness over.
THE COURT: You may proceed.
MR. TALASNIK: Thank you.
BY MR. TALASNIK:
Q. Mrs. Simonelli, you told us about going to the hearing where the judge issued the order. Did your daughter get any papers at that time that showed the order that she had gotten from the judge?
A. Yes. There were papers that she had to carry with her at all times.
Q. How did she feel about those papers?
A. She constantly had them with her. If she forgot them when we went shopping, she

would run back up and get them before she went out. She had them in her back pockets.

MR. TALASNIK: I have a series of documents which have been marked S-41 for identification.

BY MR. TALASNIK:

Q. I am going to show you, Ms. Simonelli, some folded up papers that have S-41 on them. Open those papers up and tell me if you recognize what they are.

A. Yes.

Q. What do you recognize them as being?

A. Papers that she carried with her constantly, when we were always out.

Q. These are the court orders you told us about?

A. The Court orders, yes.

MR. TALASNIK: Thank you, your Honor, I have no further questions.

THE COURT: You may cross-examine.

MR. DAVIS: Okay.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Now, Mrs. Simonelli, you've indicated to Mr. Talasnik that around January or

February of 1988 your daughter appeared to be down.

A. Yes.

Q. Now, when is the first time you noticed your daughter as you characterized her as being down?

A. Ever since she went out with him.

Q. Pardon me?

A. Ever since she went out with him.

Q. Which was when?

A. I don't even know.

Q. So is it fair to say, Mrs. Simonelli, that you don't really know when your daughter commenced to go out with Richard Highlander?

A. Until it was serious I didn't know if they were seeing -- they were seeing each other, I imagine.

Q. So you have indicated to us she appeared to be down starting when?

A. I can't say exactly. I don't know. I gradually saw it coming. It was getting worse and worse.

Q. When did you first commence to notice this down trend?

A. I would say when he went to live with

her.
Q. Which was when? To the best of your knowledge.
A. Oh, I don't know. I can't give you exact dates.
Q. Did you think that your daughter had a lot of respect for your husband and you in your home?
A. Yes.
Q. Did you think she was disrespecting you and your home when she brought Richard there to see you at Christmas?
A. When he came to our house?
Q. Yes.
A. No.
Q. Did she appear to be down that Christmas?
A. Yes.
Q. She did?
A. Yes.
Q. Did she indicate at that point that she wished Richard to leave?
A. Excuse me?
Q. Did she indicate she didn't want Richard in her house or your house?

A. Not at that point.
Q. Now, at that point had you ever seen any marks or physical violence with regard to Richard Highlander and your daughter?
A. No.
Q. Pardon me?
A. No.
Q. And up until this incident on March 16th of 1988, did you see any physical violence with regard to Richard Highlander and Gloria Simonelli?
A. Until the 16th?
Q. Until the 16th.
A. Yes.
Q. Up until the 16th, did you have any problems with Richard Highlander personally?
A. Up until the 16th?
Q. Yes.
A. No.
Q. Up until the 16th, had you asked him to leave?
A. Yes.
Q. That was a couple of weeks before the 16th?
A. Right.

Q. And you went down to Margate for what reason?
A. We always went down every weekend to see my daughter. We always stopped in to see her if we were down that end.
Q. Did you go down there around the beginning of March for the purpose of asking Mr. Highlander to leave the premisis?
A. I didn't go down there for that reason. When I went there, my daughter told me she wanted him to leave.
Q. Now, at that point is it not a fact that your daughter herself had never asked Richard Highlander to leave, had she?
A. No. But she wanted him out of the house, she told me.
Q. That may be true. The question was, as of the beginning of March of 1988, to the best of your knowledge, Gloria Simonelli never asked Richard Highlander personally to leave?
A. I have no idea. I wasn't with them if she did ask him personally.
Q. She never indicated personally that she asked him to leave?
A. She was terrified of him, I think.

Q. The question is, she never indicated she had asked him to leave to you?
A. No.
Q. Up until that point, had she ever asked you to have him leave?
A. No.
Q. Did she ever ask her father to ask him to leave?
A. No.
Q. Pardon me?
A. No.
Q. Had she had ever asked her brother to have him leave?
A. No.
Q. You were all in in the same household on Christmas. Did she ask the three of you or anyone to ask Richard to leave?
A. No.
Q. Pardon me?
A. No.
Q. Now, when you asked him to leave in the beginning of March, what happened?
A. He left.
Q. Did you have any problems with him in terms of argument or --

A. No. He was very nice. He left.
Q. And when you asked him to leave, where was Gloria?
A. She was right there.
Q. She was right there. Did she indicate at that time to him, I mean Richard now, that I want you to leave?
A. She wanted him out.
Q. That's not the question.
A. No. She didn't say that.
Q. She never told him I want you to leave, did she?
A. No.
Q. Pardon me?
A. No.
Q. Now, you say maybe about Tuesday or Wednesday of that week, maybe three or four days later, Mr. Highlander came back?
A. Right.
Q. And you say he came back in a truck?
A. Huh-huh.
Q. And you saw he talked to Gloria?
A. Right.
Q. And she didn't say a word?
A. No.

Q. Where were you during this conversation?
A. I wasn't there. I was in the house. He didn't want to talk in the house in front of me. He wanted to talk to her.
Q. He wanted some privacy with Gloria?
A. Right.
Q. So the conversation where she never said -- had never said a word took place outside?
A. Right.
Q. And you were never privvy to that?
A. Right.
Q. Isn't it also a fact, Mrs. Simonelli, that while your daughter was in that truck on that day, that she left with Richard Highlander and went somewhere and came back with some fans to be put up in the house, ceiling fans?
A. I don't recall that.
Q. You don't recall?
A. I don't recall that.
Q. Isn't it a fact that at the culmination of this discussion, Mr. Highlander finally came into the house? Is that not a

fact?
A. Yes.
Q. And the culmination of this conversation was that they would stop drinking?
A. Huh-huh.
Q. You've got to say yes or no. Pardon me?
A. I don't recall.
Q. Isn't it a fact that you told him to stop drinking and that you went so far as to open up the liquor bottles and pour it down the sink?
A. I don't recall.
Q. You don't recall that?
A. No, I don't.
Q. Do you also recall throwing out narcotic paraphernalia?
A. No, I don't recall.
Q. You don't recall it? Are you saying you don't recall or it didn't happen?
A. I don't recall anything. It didn't happen.
Q. And at that point you told them to get back together and work it out?

A. To behave, right. I spoke to them to behave, you know, maybe it will workout. I figured maybe that was it.

Q. When you say behave, that presupposes they were doing something wrong.

A. No.

Q. Let me finish the question.

What were they doing wrong that they had to behave about?

A. That they had to -- come to this point where they were separating.

Q. Pardon me?

A. To this point where they were separating.

Q. Now, you have indicated you returned about March 16th or you did return when you got a phone call from a doctor?

A. Yes.

Q. And when you and your husband were not in her presence, Gloria signed a complaint against Mr. Highlander?

A. Yes.

Q. And that complaint was for a simple assault?

A. Right.

Q. And after she met with you and your husband, then it was decided to upgrade this simple assault to an indictable offense; is that true?
A. Right.
Q. And it was at this time that Gloria decided that she would upgrade it, go to court and testify against Richard Highlander after speaking to you --
A. Not right -- not speaking to us. We read it and she said they didn't let her put down everything she wanted to when she got to the police station. She said she wanted to go back and have it updated.
Q. But this was done after speaking to you and your husband?
A. Yes.
Q. This is when she decided?
A. Yes.
Q. Pardon me?
A. Yes.
Q. And when she initially went to the police department, she had an opportunity to tell the police her story, didn't she?
A. She did. I didn't. I wasn't there.

Q. Pardon me?
A. I wasn't there, I didn't know what happened. She knew what happened. She had to write it down.
Q. Now, you've indicated on April 10th somebody attempted to force in your daughter's door?
A. Huh-huh.
Q. Did she ever sign a complaint against anybody for that?
A. Yes. She called the police. I don't know if a complaint was signed.
Q. That wasn't the question. The question was, did she ever sign a complaint regarding that matter?
A. That I don't know.
Q. Did she ever tell you she signed a complaint?
A. Not that I know of.
Q. Pardon me?
A. Not that I know of. All I know is she had called the police.
Q. And directing your attention to that matter, she never indicated she saw anybody attempt to break into her door, did she?

A. No.
Q. She didn't see --
A. No.
Q. Now, you again indicated you returned on April 23rd, April 24th and met with your daughter. Now, Mrs. Simonelli, when you would come to Margate, how would you get to Margate?
A. Drive down.
Q. And who would drive you down?
A. My husband.
Q. And then he would go back?
A. Yeah.
Q. Now, at any of the times that you and your husband were in the presence of your daughter, was there any harassment or any phone calls or anything coming from Richard Highlander?
A. No. We had changed the phone numbers.
Q. Even before you changed the phone numbers, was there any harassment while you were in her presence coming from Richard?
A. No. It was a short while before they were changed.
Q. While you were there, was there any attempt to break into the house?

A. No.
Q. And to the best of your knowledge, when your daughter was going back and forth from the house to her place of employment, was there any harassment or threats on behalf of Richard Highlander?
A. No.
Q. And you indicated that your husband would drive you down, so there was no car out front that one could look at and say, oh, Mrs. Simonelli is in there?
A. There were many a times when my husband would take off and we would be down together, of course.
MR. DAVIS: That's all I would have, your Honor.
THE COURT: Mr. Talasnik.
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Mrs. Simonelli, you have been asked about the incident in the beginning of March where you had determined to ask Richard to leave.
A. Yes.
Q. Whose idea was it?

A. It was Gloria's. She told me to speak to him.
Q. Did she tell you why she wanted you to ask him to leave?
A. She had told me again --
MR. DAVIS: I object to this as hearsay.
A. -- that he had a very --
THE COURT: Whoah, whoah. I have to rule on the objection first.
MR. TALASNIK: The matter is not being offered for the truth of the matter asserted with respect to Mrs. Simonelli, but rather to show her state of mind in communicating to her mother. The defense has raised --
THE COURT: I understand that. But I don't think it is admissible in this context. I will sustain the objection.
BY MR. TALASNIK:
Q. Was your daughter physically present when you told Richard that you wanted him to leave?
A. I imagine she was. I don't remember right now. But she was there. She was in the

house. I don't know if she was standing right next to me or what, but she was there.
Q. Was she also there when you explained why you wanted him to leave?
A. Yes. She was in the house. She had to be.
Q. Did she ever interfere or tell you to stop, that, no, I want him to stay?
A. No.
Q. Was there any kind of a liquor cabinet that required emptying by you on that date?
A. I don't remember, no. I don't think so, no.
Q. Was there any kind of a narcotics supply or hypodermic syringes or anything like that required destruction by you that day?
A. No.
Q. Mrs. Simonelli, did you and your husband put Gloria up to all of this?
A. No, we didn't.
Q. Whose idea was it to complain to the police about the assault?
A. Well, put it this way. We had read it over with a friend and us and he said this is a minor thing, it should be updated if you

want to do anything about it in the time to come.

Q. Whose idea was it to sign or get the court order from Atlantic City requiring that Richard leave the house?

A. It was her idea. It was all her idea.

Q. Whose idea was it to sign complaints in Margate charging Mr. Highlander with assaulting her?

A. It was her idea.

Q. Whose idea was it to go to court a few weeks later and testify about what Richard had done to her?

A. It was hers.

Q. Was there ever a time during any of this when she showed any reluctance to follow through with these requests?

A. Never, never. I can honestly say that. Never.

MR. TALASNIK: I have no further questions, thank you, your Honor.

THE COURT: Mr. Davis.

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Mrs. Simonelli, you just mentioned you

discussed this matter with a friend?
A. Huh-huh.
Q. Who discussed what matter?
A. That it wasn't updated. When -- when we read the report, it didn't have everything Gloria wanted in the first report. That's what he had said. If she doesn't have everything in it, this paper is nothing, he said. So if she wants to press charges, she will have to have it updated. That's exactly what Gloria did.
Q. When you say updated, you mean upgraded?
A. Upgraded, I'm sorry.
Q. And whose friend was it? Your friend or your husband's friend?
A. No. Just a friend from the neighborhood.
Q. Who talked to this friend? Who talked to the friend?
A. My husband and I and Gloria. Gloria was the one that wanted him to look at it.
Q. It was after talking to this friend that you and your husband and she upgraded it?
A. It wasn't up to us. It was Gloria's

decision to do it.
Q. But your husband accompanied her the next day at the police station?
A. She couldn't drive. She had a brace on her neck, she couldn't move, her finger was broken. Somebody had to drive her.
MR. DAVIS: That's all, your Honor.
THE COURT: Mr. Talasnik.
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. The friend was in not in any way employed with the Atlantic County Prosecutor's Office, was he?
A. No.
MR. TALASNIK: Nothing further.
MR. DAVIS: Nothing.
THE COURT: You may step down. Thank you very much.
(Witness excused).
THE COURT: We will take a brief recess here before we hear from the next witness.
We may be able to get one more witness in this afternoon.
Please don't have any discussions

about the case during the recess. Thank you.

(Whereupon, the jury leaves the courtroom)

THE COURT: Ladies and gentlemen, no one is to leave or enter the courtroom while the jury is doing so.

Who is next?

MR. TALASNIK: Helen Scully.

THE COURT: Okay.

SHERIFF'S OFFICER: All rise.

(Brief recess)

THE COURT: Ladies and gentlemen, I don't want to sound or appear to be unpleasant, but I have received a complaint from the sheriff's office with respect to conversations during the course of the proceedings. I have difficulty hearing what goes on in the back because my concentration is here. If I receive another complaint from the sheriff of that nature, I assure you I will not hesitate to clear the courtroom for the balance of the trial.

(Jury enters the courtroom)

THE COURT: Mr. Talasnik, call your next witness.

MR. TALASNIK: Thank you, your Honor.

Helen Scully.

HELEN T. SCULLY, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Whereabouts do you live?

A. I live in Ventnor on Vasser Square Avenue.

Q. How long have you lived in the Ventnor area?

A. About four years.

Q. What kind of work do you do?

A. I'm a dealer at Bally's Grand Casino.

Q. Did you ever know a young woman by the name of Gloria Simonelli?

A. Yes.

Q. How did you know her?

A. I knew her from Tropicana.

Q. Did you use to work there?

A. Yes. I started at Tropicana.

Q. Do you know what kind of work she did when she worked there?

A. She was a cigarette girl.

Q. What's a cigarette girl do?
A. They're on the same line as a cocktail waitress. They give the players at the tables in the casinos cigarettes. So they don't have to go to the gift shop or get up from the table.
Q. Is that the kind of position where you get salary and tips?
A. Yes.
Q. How long have you known or did you know Gloria Simonelli?
A. About four years.
Q. What kind of a relationship did you have with her during those four years?
A. We were girlfriends, friends.
Q. What sorts of things would you do together?
A. Go shopping, go out.
Q. That sort of thing?
A. Yeah, movies.
Q. I want to focus your attention to the second part of 1987. Did there come a time during that portion of the year, the second half of 1987 that you lost contact with her?
A. Yes, I did.

Q. Whenabouts was that?
A. It was the end of the summer, like the end of August.
Q. Up until that time, had you seen her on a fairly regular basis?
A. Yes.
Q. Do you know what caused the stoppage?
A. I was under the impression that she had a boyfriend and that she was with her boyfriend all the time and things like that happen between friends when you get involved in a relationship.
Q. I want to direct your attention now to the morning of the 16th of March 1988. That would have been a Wednesday. Do you recall something occurring that morning?
A. Yes. I was walking into my apartment and as I was crossing the street I saw Gloria. Coincidentally, she was going to her doctor that is on the same street as my building that I live in.
Q. Which doctor would that have been?
A. I'm not sure of his name.
Q. But he has an office in Ventnor?
A. Yes, right on Atlantic Avenue.

Q. How did Gloria look to you that morning?
A. Very upset and she couldn't -- she was trying to park her car and I saw her and she asked me if I would park her car for her because she was a mess.
Q. How did she look physically?
A. She had a bruise over, I believe, her left eye and her hand was very swollen.
Q. And how did she appear emotionally?
A. Very upset.
Q. How did she demonstrate or manifest being upset?
A. She was crying and she was shaking and just obliviated.
Q. What did she say in that state?
MR. DAVIS: Judge, I am going to object.
THE COURT: Let me see counsel, please.
(Whereupon, the following side bar discussion took place)
MR. TALASNIK: Your Honor, the statement will be offered under 63(4)(b) as an excited utterance.

THE COURT: Well, it's not quite the same foundation that there was the last time, Mr. Talasnik. There is at least one thing I can think of that is missing.

MR. TALASNIK: Your Honor, there was earlier testimony that the assault occurred in the morning of the 16th. This witness is seeing her on the morning of the 16th.

THE COURT: I know about that. But a showing under that rule requires that it would be made to somebody in a position of trust or confidence in who the declarant would normally confide. Here I don't have any evidence of the fact or evidence of any relationship since the previous summer.

MR. TALASNIK: I believe that that additional requirement applies to what is traditionaly known as fresh complaint and I don't believe that is what is being offered. The bare requirements of 63(4) have been met I suggest and there is no confidential relationship as there is in the traditional fresh complaint.

THE COURT: Mr. Davis?

MR. DAVIS: Judge, it is my opinion

that for an excited utterance -- two things. We don't know the time of the alleged happening of this incident.

Two, we don't know the time that this lady had seen her.

Three, we don't know what transpired in between and we know at least one thing. She spent the day driving to the doctor's. I think there is too much intervening, Judge. We don't know and it took too long of a time to be considered an excited utterance.

MR. TALASNIK: I believe, your Honor, there is testimony that both this declaration and the incident occurred on the morning of the 16th.

THE COURT: There is. I'm not worried about it from the point of view in time. I intended -- if I didn't articulate it clearly, I intended to admit the statement to the mother or the father. I think it was to the father and I would have done it to the mother in any event under the fresh complaint exception.

I don't think this is generically an excited utterance. You are asking her to

tell who did it. You haven't asked her to describe what. I don't think it should be received. I sustained the objection.

(Whereupon, the side bar discussion concluded)

BY MR. TALASNIK:

Q. While in this state that you have described for us, did Gloria identify anyone as having caused her to be in that condition?

A. Yes.

Q. Who did she identify?

MR. DAVIS: Objection.

THE COURT: Sustained.

MR. TALASNIK: It is a different exception that covers that. 63(1)(c).

THE COURT: It is not applicable here. The objection is sustained.

BY MR. TALASNIK:

Q. After seeing Gloria in that condition, both physical and emotional, did you have any kind of a conversation with her?

A. Yes.

Q. After that conversation, what did you do and what did she do?

A. She went into her doctor and I went up

to my apartment.
Q. Sometime later, either that day or another day, did you have an occasion to talk to Gloria again?
A. Yes.
Q. Approximately how much later?
A. Later that day on the phone.
Q. And how would you describe her emotional state at that time when she talked to you?
A. Still very upset.
Q. Did you have a discussion on the phone with her about what had caused her to be in that condition?
A. Yes. She told me.
Q. Okay. Now, did you make any arrangements to physically see her, to be with her at some time in the future?
A. Yes.
Q. And what is it that the two of you arranged?
A. We went to the mall about maybe three or four days after.
Q. And did you see her then?
A. Yes.

Q. How did she appear physically when you saw her these few days after the incident outside her doctor's office?
A. She had a splint on her hand because her finger was broken and she still -- she was complaining that her eyes were bothering her because of the -- because of her head.
Q. Okay. Now, at that time, was there any discussion about how this had happened to her?
A. Yes.
Q. Did that discussion include the person who had done these things to her?
A. Yes.
Q. Was a name used?
A. No, not at that time.
Q. At some later conversation, was a name used?
A. Yes.
Q. Was it a name with which you were familiar?
A. Yes, I was.
Q. What was the name?
MR. DAVIS: Objection, Judge.
MR. TALASNIK: Your Honor, again, I

urge the answer as coming under 63 --

THE COURT: Same one?

MR. TALASNIK: Yes.

THE COURT: Objection sustained.

BY MR. TALASNIK:

Q. Do you know an individual by the name of Richard Highlander?

A. Yes.

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

A. Yes.

Q. Could you identify him for the jury?

A. Yes, I can.

Q. Will you do so?

A. Yes, I will. He's sitting right over there.

THE COURT: Let the record reflect that the witness points to the defendant.

BY MR. TALASNIK:

Q. How long have you known Mr. Highlander?

A. Two years.

Q. Had you met Mr. Highlander before you had any contact with Gloria Simonelli outside her doctor's office?

A. Yes.
Q. Did you know Mr. Highlander and Ms. Simonelli independently of each other?
A. Yes.
Q. Was there ever a time when you were able to make a connection between the two?
A. No.
Q. During your visit with Gloria at the mall, was there any discussion by her about any criminal charges that she had filed?
A. Yes.
Q. Did these discussions include her willingness to pursue these charges?
A. Yes.
Q. What did she say about that?
MR. DAVIS: Objection, Judge.
MR. TALASNIK: Your Honor --
THE COURT: I will need to see counsel.
(Whereupon, the following side bar discussion took place)
THE COURT: What is the basis of the objection?
MR. DAVIS: Hearsay, your Honor.
THE COURT: What is the basis for

the proffer?

MR. TALASNIK: Just a moment. State versus Baldwin, which is reported at 47 NJ 379 specifically refers to 391, a 1966 decision by the New Jersey Supreme Court, case dealt with the prosecution for murder --

THE COURT: What's the proffer? The basis of the offer.

MR. TALASNIK: The proffer is that in that case --

THE COURT: No one wants to hear about that case. I want to hear about this case. What is the reason for which this testimony is offered.

MR. TALASNIK: That evidence of the victim's intent to prosecute the charges to the extent that that is also known and realized by the defendant and is admissible to show motive.

THE COURT: Precisely, irrespective of what Baldwin may say.

MR. DAVIS: Assuming, Judge, that she knew that Highlander knew --

THE COURT: I understand that. We are on the third witness and I will permit it.

MR. DAVIS: Judge, there is no indication, whether it is the third witness or not, whether this witness knows --

THE COURT: If he can't tie it in, he will blow the whole case. I have to let him put it in here. Evidence of that intention -- first of all, the parents have already testified to it.

Secondly, evidence of that is, in fact, evidentual as to his motive for the killing, if, in fact, he can establish that Highlander knew that that was what she was going to do and he's got to prove that..

MR. DAVIS: Judge, could I have a moment, your Honor?

Could we put that on the record, your Honor? Your Honor, what it appears is that this statement was made out of the presence of the defendant. There is no indication that Richard was made aware of it or that the statement was conveyed from Gloria Simonelli to Highlander.

THE COURT: As far as I know, that's true. The issue is not whether he heard her say it. The issue is whether, in fact, that

was her state of mind because that issue, her state of mind, is relevant to his motive. In the end --

MR. DAVIS: Say that again.

THE COURT: Her state of mind is relevant to his motive. In the end, in order to establish the motive, the State will have to prove in some fashion that he was aware of her of mind, but to approach that, they have to show what her state of mind was.

(Whereupon, the side bar discussion concluded)

THE COURT: Objection will be overruled. You may proceed.

BY MR. TALASNIK:

Q. Ms. Scully, I had asked you whether during the course of your conversations with Gloria while the two of you were shopping if there was any discussion about the criminal charges that she had filed.

A. Just that she had filed a restraining order and that she had to go to court like within the month.

Q. Were there any discussions about any criminal charges?

A. No.
Q. Now, you have indicated that in addition to this conversation with her at the mall that you had other conversations with her?
A. Yes.
Q. Did any of them relate to either the restraining order or the criminal charges?
A. No.
Q. I had earlier asked you whether you knew about Mr. Highlander and you knew Gloria independently of each other?
A. Yes.
Q. As a result of any of these other conversations, were you ever able to make a link or a connection between she and Mr. Highlander?
A. No, not at all.
Q. When was the last time that you saw Gloria?
A. The Sunday night before she was killed.
Q. And when and where was that?
A. We had gone out for a drink to Robert's. But she wasn't drinking.

Q. What do you mean she wasn't drinking?
A. She had cranberry juice.
Q. Was there any discussion about why?
A. She was trying to just -- she was just -- I think she was trying to lose weight and didn't want to drink, but she wanted to get out of the house.
Q. I want to now move you to the -- to Monday, the 25th of April 1988.
Did you have occasion to see Gloria that day?
A. No.
Q. Did you have any information about where she was that day?
A. She called my house and spoke with my sister.
Q. And did you later speak with your sister?
A. Yes. When I got home.
Q. As a result of that, did you learn where she was?
A. Yes.
Q. Where was she?
A. She was at the Greenhouse with a bunch of mutual friends of ours and she wanted me to

come down.
Q. Were you able to?
A. No. I was at a baby shower.
Q. Did you ever see Gloria again?
A. No.
Q. During the course of the conversations that you had with Gloria between the time you saw her outside the doctor's office and the last time you saw her, the Sunday before she died, did you ever have occasion to discuss her finances?
A. The day we went to the mall, she told me that she was --
MR. DAVIS: I object. This is immaterial.
MR. TALASNIK: Your Honor, with respect to that issue, it is a matter that has been raised, I suggest, by the defense. And was offered through the Simonellis and I proffer to offer the same kind of evidence through Ms. Scully to rebut the inference suggested by the defense that there was somehow a financial dependence by Ms. Simonelli.
THE COURT: I will sustain the

objection at this point, Mr. Talasnik. I must tell you that having listened to what I listened to so far, I didn't understand and don't understand now how the nature of her finances are relevant to the issue in this case. If it becomes evident later that it becomes more relevant, you may recall this witness or any other to speak to that issue. But so far the relevance to the issues here are beyond me.

MR. TALASNIK: No further questions.

THE COURT: Mr. Davis?

MR. DAVIS: I have no questions.

THE COURT: Thank you very much, you may step down.

(Witness excused)

THE COURT: I attempted to push another witness, but I feel that will do it for today.

We will recess for the afternoon and I will ask you to be back nine o'clock tomorrow morning at which time we will pick up with the next witness on behalf of the State.

Again, please report directly to the jury room here. If you get here a couple of

minutes early, that will give you a chance to get the coffee out of the way and we will be ready for you.

Now, just in general, a couple of brief reminders. Of course, when you go home, first thing everybody will ask you to tell them is what happened and you can't. Just tell them you had a nice day and they can read about it in the papers. If you want, you can make some notes to tell them later on. Remember not to read the papers or to listen to any news accounts. I don't know frankly, haven't been paying too much attention -- I think there was some media people here today, but I don't think they were here all day, but in any event, as I told you last week, whatever was important to them and what they choose to write about may or may not be important to you and it is really what you think that is important and not what the newspaper thinks is important. So if you want, as I mentioned to you, you could have someone from your household scan the paper for you, cut articles out and keep them for you after the case is done.

Remember I had mentioned to you please to refrain from visiting the area of the restaurant. I remind you of that now for the reasons I indicated last week for the duration. Stay away from that particular area of town. That's about all I can think of.

Have a pleasant evening and see you tomorrow morning.

(Whereupon, the jury leaves the courtroom)

THE COURT: Gentlemen, it is my present thinking that we will not be sitting as far as the jury is concerned on Friday, although I want to hold off making any final determination on that until later in the week. But it is possible that we may be far along enough by then to use some time on Friday to discuss issues of law, so give that some thought. Because at some point we ought to start belaboring the record with some of what we have been talking about. I don't know where we will be by then and I'm not sure you know either, but at least keep it in the back of your minds.

Anything further?

Who is next? You had mentioned five this morning and we did three. Who is after the first two?

MR. TALASNIK: Jean Bruni, Diane Pond and Jennifer Saitz.

THE COURT: Okay. They are under the general heading of friends.

MR. TALASNIK: The focus will begin to change from friends of the victim to acquaintances of the defendant.

THE COURT: Okay. Those three witnesses.

MR. TALASNIK: Yes.

THE COURT: Who follows after that?

MR. TALASNIK: I'm not sure, Judge. I have a number of other witnesses subpoenaed. I'm not committed to a specific sequence after that.

THE COURT: Okay. I will ask you again in the morning. So Mr. Davis knows.

MR. TALASNIK: I --

THE COURT: You can't let the man go home and not have anything to think about.

MR. TALASNIK: It is a foreign procedure to lay out sequence of witnesses

this far in advance.

THE COURT: I am not going too far. I have the sense of what you told me today that the next three witnesses will be relatively brief. I will do the same thing to him when we get to him to have a reasonably good idea who is coming in tomorrow. That is all we are talking about. When it is his nickel, I will be asking him the same questions.

MR. TALASNIK: Very well, your Honor.

THE COURT: Okay.

(Whereupon, the hearing adjourned)

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: October 3, 1989

A-59-89T4

Part I
pgs. 1-135

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

RECD
APPELLATE DIVISION
JUL 11 1990

- - - -

I N D E X

WITNESS:	D	C	RD	RC
JEAN HENDERSON				
Mr. Talasnik	6		48 & 60	
Mr. Davis		29		57
DIANE POND				
Mr. Talasnik	62		75	
Mr. Davis		69		
JENNIFER SAITZ				
Mr. Talasnik	78		105	
Mr. Davis		94		111
M. ROBERT BROOKS				
Mr. Talasnik	112			155
Mr. Davis		132		
TIMOTHY MOONEY				
Mr. Talasnik	160			
Mr. Davis		170		
MICHAEL REED				
Mr. Talasnik	178		212 & 221	
Mr. Davis		196		218
RICHARD STEWART				
Mr. Talasnik	240		261 & 267	
Mr. Davis		251		264

E X H I B I T S

NO.	FOR IDENTIFICATION	IN EVIDENCE
D-6		253

P R O C E E D I N G S

THE COURT: Are we all set?

MR. TALASNIK: Yes.

MR. DAVIS: Yes.

(Whereupon, the jury enters the courtroom)

THE COURT: Ladies and gentlemen, good morning. It occurs to me I forgot to say anything about Friday yesterday and it is because I don't know anything about Friday yet. I just want to let you know I didn't know. As soon as I know, I will tell you. My suspicion is that we will probably not need you Friday, but I don't want to tell you that so you don't make plans. I should know by tomorrow afternoon one way or another.

In any event, we will, of course, be here today, tomorrow and Thursday without question and I'm reasonably sure we won't finish this week anyway, but I will let you know about Friday when we get there.

Mr. Talasnik?

MR. TALASNIK: Thank you. The State would call Jean Bruni.

(Whereupon, the following took place

at side bar:)

MR. DAVIS: I noticed one of the State's witnesses is in the courtroom; Brooks. I don't know if Murray is familiar with him or not.

MR. PRESTON: The one in the black jacket.

MR. TALASNIK: I don't think it is Robert Brooks.

MR. DAVIS: That's what the defendant says. I don't know Brooks.

MR. TALASNIK: Unless he's changed his appearance --

THE COURT: Find out.

(Whereupon, side bar finished)

JEAN HENDERSON, having been duly sworn, was examined and testified as follows:

THE COURT: Okay. Wait one second. Mr. Talasnik had to take care of something. How do you spell your first name?

THE WITNESS: J-E-A-N.

THE COURT: Thank you.

Mr. Talasnik, Jean Henderson.

MR. TALASNIK: There was an intervening marriage, your Honor.

THE COURT: Well, I guess I'm glad to hear that. In the meantime --

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Ms. Henderson, what was your maiden name?

A. Bruni.

Q. Ms. Henderson, where did you live?

A. 132 The Orchards, Pleasantville.

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

A. Since 1981.

Q. Where do you work?

A. Trop World.

Q. Was that known by another name earlier?

A. Yes. Tropicana.

Q. What kind of work do you do at Trop World?

A. Retail shift supervisor.

Q. What does that mean?

A. I'm in charge of the three gift shops that we have and the employees, my staff and vending.

Q. For how long a time have you been a

supervisor with respect to these gift shops?
A. Since February of '82.
Q. Since that time and during the time since, have you had an opportunity to meet a woman by the name of Gloria Simonelli?
A. Yes, I have.
Q. How did you come to know Gloria Simonelli?
A. When I began at Tropicana, she initially was a supervisor on the grave shift and I was being trained by the three supervisors, she being one of them.
Q. At some point, did she change job descriptions?
A. Yes. After we lost our cigarette girl, she decided that she would like to try for it and she did -- we encouraged her to go for it and she did and she got it.
Q. Why would somebody go from the supervisor of the gift shops to being a cigarette girl?
A. She was a supervisor initially and because grave shift only has one store to worry about where in the daytime a supervisor had two stores, first and second floor, they

didn't feel it warranted a supervisor on grave since it was only one small store on the second floor. So she was demoted to lead salesperson and she just really wasn't happy with that position and she wanted to do something to further herself.

Q. Would there be any financial incentive to want to work as a cigarette girl?

A. I'm sure -- well, Gloria liked people, so I think the fact she could get from behind the counter and be out on the floor was something she thought was going to be, you know -- she totally was a different person when she got out of the gift shop. She totally was a very vibrant and very vivacious person. I feel it was a better -- it was much better than being stuck in that gift shop for her because she didn't like it.

Q. Okay. I have an item that had been earlier marked as S-40 for identification. I would like you to look at it and tell me if you recognize what it is.

A. Yes. It is her ID badge from Tropicana.

Q. How do you recognize it as hers?

A. It's got her picture, her name and her position on it.
Q. During the time that you became a supervisor with respect to Gloria Simonelli, did you also begin to have a social relationship with her as well?
A. Yes.
Q. What did that normally consist of?
A. Basically we had the same days off. Several of us did. So, you know, if Sunday or Monday when we were off, we might plan something or meet somewhere. We did it not often, but occasionally we did it.
Q. And Sundays and Mondays were the days off that the two of you usually had in common?
A. Yes.
Q. During the course of your employment with Tropicana, did you come to know a man by the name of Richard Highlander?
A. Yes.
Q. Do you see the man that you knew as Richard Highlander in the courtroom today?
A. Yes, I do.
Q. Could you identify him, please?
A. Sitting right there.

THE COURT: Indicating the defendant.

BY MR. TALASNIK:

Q. Do you know whether and to what extent Richard Highlander and Gloria Simonelli at some point became involved in any kind of a relationship?

A. Yes.

Q. When did that occur?

A. I would say approximately September, October.

Q. Of what year?

A. Of '87.

Q. September or October of '87?

A. Correct.

Q. Now, do you know whether Mr. Highlander had attempted to date Gloria prior to that time?

A. Yes.

Q. How do you know that?

A. She told me that herself.

Q. Do you know what it was, if anything, that triggered her decision to begin to see Mr. Highlander?

A. Well, initially Gloria was trying to

get some work done, track lighting put into her condo and, you know, he told her that he had someone that could do the job for her, no problem. He would see to it that it was done if she would go out with him. And -- he did have someone come and it was done and the evening that Gloria came to work, she said that he sent a limo to bring her to work. And I said -- I asked, did you come by yourself and she said yes. And I said, well, what was the purpose of that for you just to come to work in a limo and she said I don't know, but -- I guess I'm supposed to be impressed by that.

Q. Did Gloria begin to date Richard Highlander as best you can recall now beginning in the fall of 1987?

A. Yes.

Q. Now, was your relationship with Gloria such that the two of you would talk about things that were going on in your lives?

A. Yes. She was -- she was on duty when I was on duty. I began at 4:00, but she came in around 6:30, 7:00. So I spent most of the evening with her.

Q. Did she discuss her relationship with Richard Highlander much?
A. At times. It depended on the situation and how freely she wanted to open up and tell you. I would say probably more times than not, only because I was with her a lot.
Q. What was the general tenor of her discussion with you about her relationship with Mr. Highlander?
A. In the beginning, I believe it was -- I would say not an infactuation, but the fact of the limo scenes and gold necklaces and little things that, you know, every woman supposedly will be flattered by, but she could see through him. She said, well, look at this and would show me whatever she received. And then it looked as though she was caught up in it, in the situation, and it looked like she wanted to get out, but couldn't get out.
Q. What is it that leads you to conclude that as the relationship progressed, Gloria acted like she wanted to get out?
A. She would act like when -- like when he used to come into the store, she would be upset and she would say you can't be here, you

have to leave, I'm working. She would get nervous and then she would go back out onto the floor with her tray and -- I never had to say anything to him and he always used to leave, but you could tell she was frightened.

Q. That was your impression?

A. That's the way I took it, you know. I tried to say that there was nothing wrong, somebody stops in to say hello to anybody, but you can't pitch a tent there because she was working.

Q. Around the 16th or so of March of 1988, did you become aware of an incident that occurred between Gloria and Richard Highlander in Gloria's condominium?

A. Yes, I did.

Q. How did you become aware of that incident?

A. Well, primarily because she has to report in if she's not coming to work, which she did do to me. She called. And after the phone call, I just presumed she just wouldn't come in and then later that evening, a couple of hours later, maybe 7 o'clock, she and her mother came in to see me in person.

Q. When she and her mother came in to see you in person, would you describe how she looked?
A. Well, she had a collar around her neck and she had a very bad bruise on her left side of her face and her eye and her finger was broken and in a splint and --
Q. Would you describe the emotional state that you saw when she came to see you with her mother that night?
A. She was distraught. She was a mess. She -- she tried to sit down and give me the story, but she was hysterical for maybe the first five minutes of the conversation and then her mother was with her and she also was very upset. I would say it took them a good 10 minutes to get themselves composed and then they began to tell me the story.
Q. Were they able to relate to you what had happened and who had caused these injuries?
A. Yes.
Q. Now, you said you were Gloria's supervisor and she had to report in to you if she was going to miss work. Do you recall now

whether she missed more than just that one night?
A. Absolutely.
Q. Do you know how much time she missed?
A. I would say approximately two weeks.
Q. Do you know why?
A. Because she -- for one thing, she didn't want to come to work with a bruised face and I know she was receiving treatment for her neck and she really wanted to wait until her face was cleared up and she was able to carry her tray.
Q. Okay. During this absence from work, did you continue to have contact with Gloria?
A. When you're out more than three days, you basically have to report in every night to call in and then you naturally have to bring a doctor's note, but she would report in every night she did not come.
Q. During any of those calls-in, during any of that reporting, did you ever discuss with her any charges that she may have brought against the person who had done this to her?
A. Well, she said the night she came to see me, she told me that she was going to do

that and she just wanted him out of her life because she said she can't live like this anymore.

Q. That she was going to do what?

A. She was going to place charges and have a bench warrant put out for him and she didn't want him near her house any more or around her.

Q. Place charges against him?

A. Richard Highlander.

Q. When Gloria finally returned to work, did you continue to serve as her supervisor?

A. Yes.

Q. And did you continue to have contact with her therefore on a fairly regular basis?

A. Yes.

Q. During those contacts at work, was there ever any discussion with her about any criminal charges that she had brought against Mr. Highlander?

A. Yes.

Q. What kinds of discussions did you have with her?

A. She initially said that she wanted to take him to court now because she was tired of

getting beat up by him and she said I'm not going to stand for it anymore and I'm taking it all the way, she said, because I'm not having anybody beat me up like this. She said, my father never did this and why should this man do this to me.

Q. Did you also continue to maintain a social relationship with Gloria?

A. Absolutely.

Q. And that would have been on these days off, Sundays and Mondays?

A. Yes.

Q. Did the two of you continue to have Sundays and Mondays off in common?

A. Yes.

Q. Did you become aware of an incident on the 10th of April, 1988, involving something that occurred outside Gloria's apartment?

A. Yes.

Q. What was it that you learned and from what source?

A. Gloria said she no sooner shut her light off to go to bed and she said the front door was smashed and broken into it.

Q. Did Gloria ever indicate that she ever

actually saw Mr. Highlander do this?
A. No.
Q. How did Gloria appear in terms of her demeanor during the weeks between her return to work and her ultimate death?
A. Extremely upset, nervous and afraid.
Q. Was there anything specific that you can think of that leads you to conclude that she seemed nervous and afraid?
A. Well, Gloria was a very bubbly person and she talked and liked everybody and at night when she would finish, she would stay -- if the casino was busy, she would work later if it warranted her staying. But when she came back, she was always looking behind her and around and I noticed when I would get done at midnight, she would fill her tray out and try to be downstairs when I was leaving and it looked like she wanted me to leave the building with her, like she needed somebody to escort her out to her car and that's what I started to do because she was, you know, genuinely afraid.
Q. Do you know whether any effort was made to sensitize the security people at

Tropicana regarding the situation?
A. Yes, I do believe they were notified and she did -- she had a few friends that worked in security and they did look out for her, but I don't know that she specifically went to them and said give me an escort. I think that's why she used to try to leave with me.
Q. During these weeks between Gloria's return to work and her ultimate death, did you have any direct contacts with Richard Highlander?
A. I had a phone call from him.
Q. Tell us about that.
A. When she initially got rid of him, so to speak, he called me because she didn't want any parts of him or any contact with him at all. He asked me if I would please intercede for him and help him get back to her and I just wanted to talk to her and give her this number. I took a number down, but I never gave it to her.
Q. Did you have any contacts from anyone else on Mr. Highlander's behalf?
A. No.

Q. I want to now bring your attention to Monday, the 25th of April 1988. Was this a Monday you had off?
A. Yes.
Q. Did Gloria have that day off as well?
A. Yes.
Q. Did you see Gloria that day?
A. Yes, I did.
Q. Where was the first place that you saw her that day, the 25th of April?
A. We met at Cousin's with several other people.
Q. Do you remember who else was there when you met her that afternoon?
A. Yes. It was secretary's week and we took our secretary Jeri out for lunch and there was Terry McCabe, Susan Donato, Kathy Backey, Jeff Henderson, Gloria. I believe that was -- and Pat Rush was with us also.
Q. Okay. Do you know about what time it was that Gloria arrived at Cousin's on the 25th of April?
A. She arrived before we did, so I would say she probably got there around 12:30.
Q. 12:30 in the afternoon?

Q. Is that one of the things that entered into your group decision to go there as opposed to any place else?
A. Simply because the majority of us lived in Ventnor, Margate, right there in the surrounding areas.
Q. And was the Greenhouse a fairly well known spot in that area?
A. Yes.
Q. Did you yourself then go to the Greenhouse?
A. Yes, we did.
Q. About what time did you get there?
A. Approximately I would say between quarter after 4:00 and quarter to 5:00.
Q. Did Gloria go with you?
A. She didn't go initially. She went home to drop her coat off. She didn't want to leave it in the car. And she said I will meet you there.
Q. And do you recall Gloria actually arriving at the Greenhouse in the late afternoon or early evening of the 25th?
A. Yes. I would say it was at least 20 minutes after we arrived.

Q. So that would have been around five o'clock?
A. Yes.
Q. Still light outside?
A. Yes.
Q. Did Gloria bring her car with her?
A. Yes.
Q. Do you know what kind of car she had?
A. She had a new black -- I don't know what she got. I think it was a -- it was brand new. I don't know the make.
Q. Okay. But it was black?
A. Yes.
Q. Now, you saw her enter the restaurant at sometime around five o'clock that evening?
A. Yes.
Q. Did she join you in the restaurant?
A. Yes, she did.
Q. What sorts of things went on there with Gloria?
A. Gloria was very -- she seemed very safe that day. She was -- she seemed very happy to be with her friends.
Q. Were any efforts made by Gloria or anyone in the group to try to get more people

to join?
A. She was making phone calls to try to -- it seemed like she wanted everybody to be with her that day. She went to the phone several times and she had her phone book with her. And to no avail she called everybody and there was message machines all on and she said I left messages. I know she called Helen and several other people and tried to get ahold of them to make them all come there with us.
Q. Okay. Do you know a young man by the name of Patrick Sullivan?
A. Yes.
Q. How do you know Patrick Sullivan?
A. Initially Pat used to work with my husband at Duke Max and then he also was employed at Tropicana.
Q. Do you know about where Mr. Sullivan lived at this time?
A. He lived right down the street from Gloria.
Q. Was Mr. Sullivan involved in this group at the Greenhouse that night?
A. No. He was not in the beginning. He came in at the very end when we were breaking

up and everybody was going home separately.
Q. Do you recall Mr. Sullivan coming into the Greenhouse that night?
A. Yes.
Q. Can you tell us about what time that might have been?
A. That was around -- I would say probably 7:00 or 7:15.
Q. Still light outside?
A. Yes.
Q. Now, were you able to determine whether Gloria knew Mr. Sullivan?
A. Yes, she did know him.
Q. How do you know that?
A. Because she knew him also from when he worked at Tropicana also. Plus she knew he lived on the street and had taken him home before. I do know that for a fact.
Q. What do you mean?
A. She had dropped him off -- Pat didn't have a car and she told me once that they were out together, not together, but had met somewhere and she dropped him off because she lives at the corner and he lived in the middle of the block.

Q. Do you know whether they ever dated?
A. No, absolutely not.
THE COURT: Excuse me a moment. You don't know or they didn't?
THE WITNESS: They did not.
BY MR. TALASNIK:
Q. Do you know or do you recall whether Mr. Sullivan came in by himself that evening or whether he was with someone?
A. He came in with another gentleman, which I believe his name was Pat also.
Q. And did Pat Sullivan and his friend ultimately join the group you were part of?
A. Yes.
Q. How late did you stay that night?
A. Jeff and I left around -- I would say around eight o'clock, quarter to 8:00.
Q. When you left, was Gloria still there?
A. Yes.
Q. Now, do you recall what Gloria was wearing that night?
A. Yes. She had on a white sweater and she had on high-rise jeans and a black belt and she had on -- well, she was carrying a brown leather jacket.

Q. Mrs. Henderson, I have something that I want to show you which has been marked S-13 for identification. I would like you to look at it and tell me if you recognize what this is.

A. That's Gloria's jacket.

Q. This was the jacket she had with her that night?

A. Yes, it is.

Q. When you and your husband left the bar about eight o'clock that night, was Gloria still there?

A. Yes, she was.

Q. Did you speak with her before you left?

A. Yes, I did.

Q. Tell us about that.

A. I went over -- she was about two seats from me on the corner of the bar and I went over and I said, Glor, we're going to go. She said okay. I said, are you all right? She said I'm fine. I said, okay, I'll see you tomorrow.

Q. You then went home?

A. Yes. I went right home.

Q. What was the next thing that you recall?
A. Approximately nine o'clock the phone rang and it was Pat Sullivan and he asked me what was Gloria's last name and I said Simonelli. I said why. And he said -- he said because she's been shot.
Q. Would there be another call a little bit later?
A. Yes. He -- I hung up the phone and I told Jeff we had to go to the police station and I immediately called Terry and told her to meet us down there.
Q. Terry who?
A. Terry McCabe.
Q. She had been with the group that night?
A. She was with us also.
Q. Okay.
A. And as soon as I hung up the phone, it rang again and he said she's dead.

MR. TALASNIK: Your Honor, I have no further questions.

THE COURT: Mr. Davis.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Mrs. Bruni, how long had you known Gloria?

A. Six years.

Q. Six years. And you met her while you were working?

A. Yes.

Q. And how long had you known Richard Highlander?

A. I would say approximately two years.

Q. Two years up to date or -- to date?

A. To date.

Q. And how did you happen to meet Mr. Highlander?

A. I initially met him just casually in the casino from just seeing him and then I knew him from him trying to date another girl that worked in our shop.

Q. And when was it brought to your attention that he was dating or attempting to talk to Gloria Simonelli?

A. Well, when Gloria was a cigarette girl in the very beginning, she had told me he had tried to date her before and she always said no.

Q. When he initially started dating her, was Gloria a cigarette girl?
A. Yes.
Q. Now, did Gloria tell you all her personal business?
A. No, not all of it.
Q. Were you good girlfriends?
A. Yes.
Q. And she would tell you what she wanted to tell you?
A. Yes.
Q. Had you ever been in the company of Gloria and Richard Highlander on any double dates or anything like that?
A. Not double dating, but I was in their company.
Q. Were you in their company?
A. Huh-huh.
Q. Now, after she commenced dating Mr. Highlander, how was she reacting?
A. Well, in the beginning, she seemed to be up, but it didn't last very long. She -- as I said, she became frightened and scared, like she wanted to get out, but she knew she couldn't get out of the relationship.

Q. She didn't tell you she couldn't get out, did she?
A. Yes, she did.
Q. What did she tell you?
A. She said, you know, I want him out of my life. But he just doesn't take no for an answer.
Q. Now, somewhere along the line she allowed him to move into her household, didn't she?
A. Yes.
Q. Directing your attention to when she allowed him to move into her household, she never attempted at that point, she didn't attempt to keep him out, did she?
A. At that point, initially, no.
Q. She never indicated that he forced his way into her house, did she?
A. No.
Q. She never told you that he forced his way into her lifestyle, did she? Pardon?
A. Forced?
Q. Yes.
A. Yes, he was forceful, pursuant.
Q. He may have been pursuant, but he

didn't force his way into her life, did he?
A. I guess not.
Q. She could have rejected him in the beginning. As you have indicated to the prosecutor, initially she did reject him, didn't she?
A. Huh-huh.
Q. At that time, did she receive any physical beatings or force upon her body to the best of your knowledge?
A. In the beginning, no.
Q. Now, you've also indicated that he volunteered to put up some track lighting.
A. Yes.
Q. And you say he did this in return for a date.
A. Yes.
Q. Who told you that? Gloria?
A. Yes.
Q. Did you ever talk to Mr. Highlander about that?
A. No.
Q. And she further indicated that night he sent a limousine to her house to pick her up?

A. Yes.
Q. Did she refuse the ride in his limousine?
A. She didn't want to go, but she went.
Q. The query was, did she refuse to ride in this limousine?
A. No.
Q. That night, she had a date with Mr. Highlander, didn't she?
A. Yes.
Q. Did she refuse to go on that date?
A. No.
Q. Was she forced to go on that date? Pardon me?
A. She wasn't forced, but she went.
Q. She went. In fact, she wanted to go, didn't she?
A. I wouldn't say wanted.
Q. In fact, at that time she wanted Rick Highlander, didn't she?
A. I don't know who she wanted.
Q. So much so they became live-in lovers, didn't they?
A. I guess.
Q. Now, you've also indicated, Mrs.

Henderson, that she received certain gifts that all girls are flattered by and you indicated gold. What type of gold did she receive?

A. She showed me a necklace that she had on.

Q. What else did she receive?

A. I believe she showed me a bracelet once.

Q. Did she tell you anything about any other gifts she got from Mr. Highlander?

A. No.

Q. Do you know if she ever said, Rich, I don't want you anymore, take your gifts back?

A. No.

Q. Did she indicate to you that she went on vacations?

A. Yes.

Q. Was she forced to go on these vacations?

A. No.

Q. Where were these vacations?

A. She went to Colorado and California.

Q. And when she came back to work from these vacations, was she up or was she

frightened and scared at that time?
A. Initially, no, but later she became upset because of all the money that was spent on her credit cards.
Q. Did you see any of these monies being spent on her credit cards?
A. I didn't go with her.
Q. Do you know if she was paid for this money that you say was put on the credit cards?
A. No, she wasn't.
Q. Do you know for a fact?
MR. TALASNIK: Excuse me, your Honor. The witness should be given an opportunity to give a complete answer.
Q. If you haven't finished answering, you may finish.
A. When Gloria came home, not initially, no. But after her bills came in the mail, she was very upset because she had put everything, the trip and everything on her cards and Rick had agreed to pay her back. And she was not getting this money and Gloria was very upset about it.
Q. Now, you've also indicated, Mrs.

Henderson, that Mr. Highlander on different occasions would come to the job; is that true?
A. Yes.
Q. And you further indicated that Gloria Simonelli didn't want him there. That was your impression.
A. Because she knew it wasn't allowed.
Q. She didn't want him there because nobody or no employees in that location were supposed to have friends visiting them during work hours?
A. That's correct.
Q. And that was ner main concern? Pardon me?
A. Correct.
Q. During these visits, did you ever have to put Mr. Highlander out?
A. No.
Q. Did you ever have to call the security guards?
A. No.
Q. Did Gloria Simonelli ever call the security guards?
A. Not that I know of.
Q. Now, you've indicated that probably

during January or whatever, it was your impression that Gloria wanted to stop the relationship?

A. Yes.

Q. Do you know if she did anything to stop this relationship? Were you ever in her presence when she ever indicated to Mr. Highlander that the relationship was over?

A. With them together?

Q. Yes.

A. No.

Q. Did you ever discuss this matter with Mr. Highlander at that time?

A. No.

Q. Did you ever discuss the relationship with Mr. Highlander at all?

A. No.

Q. Isn't it a fact that there was some indication from Gloria that Mr. Highlander and she were going to get married?

A. There was talk of it.

Q. There was talk, wasn't there. In fact, do you recall Valentine's Day of 1988, February 14th, when there was an article in the paper about Gloria Simonelli and Richard

Highlander and how they got together and how they intended to get married?

A. Yes.

Q. And how she told the newspaper people how she met him and saw him and this relationship was growing to the point that they were going to have a lasting relationship? Isn't that a fact?

A. That's what the paper said.

Q. Well, Gloria never denied it, did she?

A. No.

Q. In fact, the information came from Gloria's mouth, didn't it?

A. Yes, it did.

Q. That was on February 14th of 1988 when this relationship was, as you've indicated, was supposed to be degenerating to the point that Gloria was frightened and wanted to get out of it?

A. Yes.

Q. But she was publicly telling people she wanted to get married and how much she loved Richard Highlander and how she had met Richard Highlander, isn't that a fact?

A. Yes.

Q. You've got to say yes or no.
A. Yes.
Q. Now, you've indicated that on March 16th, Gloria and her mother came to see you at the store.
A. Yes.
Q. At this time you say that Gloria was bruised. And Gloria told you that Mr. Highlander caused these bruises?
A. Yes.
Q. Was the mother in the habit of coming to see you with Gloria?
A. She gambled at the casino. She was there even if Gloria wasn't there.
Q. And do you know why Gloria had come to see you that night?
A. Why she had to?
Q. Yes. Why did she come see you?
A. To tell me the story.
Q. And did the mother tell you the story also?
A. Yes. She was there.
Q. The question is, did the mother tell you the story also?
A. Yes.

Q. Now, you said at that time that it took Gloria -- she was distraught and took her 10 minutes to get composed. You said she was upset. Do you know if part of this upsetment was the fact that two people who were in love were breaking up and this is part of the upsetment?
A. No.
Q. No what?
A. I didn't know that.
Q. You didn't know that?
A. No.
Q. Is this the first time that Gloria and Richard had broken up, to your knowledge?
A. To my knowledge, yes.
Q. Did you know that in the beginning of March that Richard had left the household at the request of Gloria's mother?
A. Yes.
Q. So this isn't the first time that they broke up, is it?
A. No.
Q. And you knew that this wasn't the first time that they broke up, didn't you?
A. Yes.

Q. The first time they broke up, what happened? Do you know?
A. The first time they were supposedly going to split up and see if they could get their lives together and Rick had stopped drinking and see what kind -- if they could both get away from each other and see how they could be and maybe try it again.
Q. So at that point when they broke up around the beginning of March, Gloria was under the impression that maybe if Rick stopped drinking, they they could get this thing started again; isn't that true?
A. She hoped maybe that way, but I didn't -- in her face, you could tell she didn't think he was going to make it.
Q. Maybe she didn't think they were going to make it, but she was sure hoping they were going to make it, wasn't she?
A. I don't know if she was hoping for it. She was scared to death.
Q. She was so scared, Mrs. Henderson, that she allowed Rich to return to her premisis and live there again?
A. Yes, forcibly.

Q. Well, did you know that the mother was there when he returned to live?
A. Yes.
Q. And he forced himself into the premisis? What do you mean when you say forced? Let me ask you that.
A. When somebody is afraid of somebody else and you can threaten somebody with actions and words rather than -- you don't have to touch anybody to be afraid of him. And she was afraid of him.
Q. Did you ever see Richard use any force upon Gloria?
A. No.
Q. Words or otherwise?
A. Words, but not --
Q. You never saw him use physical force, did you?
A. Not in my presence.
Q. Did you ever see him use any force upon the mother?
A. No.
Q. And up to this point on March 16th, did Gloria, to the best of your knowledge, did she ever show you any bruises?

A. I saw them. She didn't have to show me. I saw them.
Q. Do you know who caused them?
A. She said he did.
Q. Was any complaints ever signed against Richard Highlander?
A. Yes.
Q. Other than this one on March 16th.
A. Not that I know of.
Q. Up until this March 16th, did Gloria ever attempt to use the auspices of any public office to have Richard Highlander removed, namely the police or the court system?
A. Not that I know of.
Q. Now, you say on April 10th she indicated to you that somebody hit her front door?
A. Yes.
Q. Do you know who it was?
A. No, I don't.
Q. Pardon me?
A. No, I don't.
Q. She didn't know who it was either, did she?
A. She thought she knew.

Q. She may have thought she knew, but she didn't know for a fact, did she?
A. No.
Q. Now, you say there came a time when she returned to work. When was that?
A. Like I said, about two weeks after -- two weeks after the incident happened.
Q. And that was about what, the end of March?
A. Something like that.
Q. Now, during the time she returned to work, did you ever see Richard Highlander on the premisis of the Tropicana?
A. After that, no.
Q. Did you ever see him in the presence of Gloria after that date?
A. No.
Q. Now, you further indicated that she would walk or you would walk her to her vehicle. Did you ever see Richard Highlander then?
A. No. I didn't walk her to her car. I would walk her outside to the parking lot. I didn't take her to the door.
Q. As far as you walked to the car --

A. No.
Q. Did you ever see Richard Highlander walking about?
A. No.
Q. Did you ever hear him attempt to give her a phone call at that time?
A. Not that I know of.
Q. You've indicated the only phone call you were aware of was the phone call that he made to you.
A. Yes.
Q. And at that point he was trying to get you to speak to Gloria Simonelli?
A. Yes.
Q. And did you?
A. No.
Q. Any reason why you would not?
A. Because she didn't want to be bothered.
Q. Did you let her decide that or you decided in your own mind --
A. I decided it. I didn't even give her the number.
Q. And, in fact, when was the last time you actually saw Richard Highlander outside of

today?
A. I don't even know.
Q. Pardon me?
A. I don't know.
Q. Is it fair to say that after this incident, March 16, you never saw him in the company of Gloria?
A. No.
Q. And you were personally aware of any attempts by him to contact Gloria or harass or frighten her?
A. Yes. He wrote her a letter.
Q. He may have written her a letter. Did you read it?
A. Yes.
Q. Was it a frightening letter or was it a love letter?
A. It was a love letter, and the first one she ripped up, she didn't even read it. The second one she opened.
Q. The one that you read was not a threatening letter, but a love letter, how much I love and how much I want you and how much I would like to get back with you, is that not a fact?

A. Yes.

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

THE COURT: Mr. Talasnik?

MR. TALASNIK: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Ms. Henderson, in response to one of Mr. Davis' questions --

MR. DAVIS: Judge, excuse me. I forgot one question, if I may.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Ms. Henderson, I forgot to ask you one question.

On this night of April 25, when you left Cousin's to go to the Greenhouse, is it a fair statement to say that the fact you and the entire group were at the Greenhouse was by happenstance, was not preplanned?

A. No.

Q. Is it fair to say that no one in that group knew you were actually going to the Greenhouse until the group that was located at

Cousin's decided to go to the Greenhouse?
A. Yes.
MR. DAVIS: That's all, thank you, I'm sorry.
THE COURT: Mr. Talasnik?
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Mrs. Henderson, in response to one of the questions asked of you by Mr. Davis, you said that there was an occasion where you were in the company of both Gloria and Richard. Do you recall that?
A. Yes.
Q. When was that incident? When did you see the two of them together in a social setting?
A. Well, one evening -- as a matter of fact, there were two. One I needed a ride home and Gloria said I'll be getting done also, so Rick and I will take you home.
Q. All right. In terms of months or end of one year, beginning of another year, when was this incident?
A. I would have to say probably the end of February, beginning of March maybe.

Q. Okay. End of February, beginning of March of 1988?
A. Yes.
Q. Okay. I want you to describe how you saw the two of them relating together late February or early March of 1988.
A. Well, Rick was at the casino waiting for Gloria to get done work and he was drinking while he was waiting for us or her. He didn't know he was taking me home. And when we were finished working, Gloria said, we're going to drop Jeannie off. And he said, let's go for a drink. And I said, Rick, I'm really tired, can we not go. And he said, no, just one, just one.

We went to the Flamingo and we had all ordered a drink and a friend of Rick's came in and he was talking to him and he wanted to stay and have another drink and, you know, Gloria said can't we go, Jeannie wants to leave and we wanted to go home and he wanted to stay. And she asked him again and he kind of got a little angry, that he wanted to stay and drink all night.

The Rick that I knew without

drinking and the Rick that y~
was drinking was like a Jekyll and Hyde.
he kind of got mean with Gloria and I said
don't say anything else, when he's ready to
go, we'll leave.

Q. What do you mean he started getting
mean with Gloria?

A. Well -- he didn't talk very nice to
her. I said, rather than start a fight, I
tried to tell her not to say anything and when
he's ready, we'll go. So we just waited and
sat until he was ready to go and then we left.

Q. Okay.

Now, nobody forced you physically to
go with them that night and to have the drink;
right?

A. No.

Q. But did you want to go?

A. It was a ride. I didn't want to go
out for a drink, no.

Q. There was another incident that you
now recall where you saw the two of them
together?

A. Well, two of the previous supervisors
that used to work with us were in the City

visiting Atlantic City and they were the two previous supervisors that Gloria was -- started with as a supervisor and we decided to meet them at 12 South when we were all done working. Gloria and Rick and this girl Stephanie Smith and Cheryl Tambarino and myself and Jeff went to 12 South and I was a -- it was a very catch-up night with the two girls we hadn't seen for a long time.

Q. Is there anything that sticks in your mind about how Rick and Gloria acted together or how they related to each other that time?

A. Well, that night was kind of -- basically it was the two girls we hadn't seen for a long time and when the one, Cheryl, decided to leave and get out to the car, it was towed and that was kind of the main event that evening and Gloria and Rick went with her to try to see if they could get her car out, but basically it was mostly talking among with the two girls.

Q. Would this have been before the late February or March incident that you described earlier?

A. I would probably say yes.

Q. Okay.

Now, you were asked questions about the relationship and any discussions that you had with Gloria about that relationship. Did the -- did Gloria's reaction to the relationship or her discussions with you about it undergo changes as the months would progress?

A. Yes.

Q. From what to what?

A. From --

MR. DAVIS: Judge, I'm going to object to this line. Mr. Talasnik went into this before --

THE COURT: Isn't this repetitive?

MR. TALASNIK: I don't believe that it is, your Honor. Mr. Davis attempted to demonstrate or to undermine Ms. Bruni's testimony about the relationship and tried to establish that it was favorable right up until the time of the March assault.

THE COURT: Well, you may inquire into the area. I think you should be careful not to simply elicit the same evidence that was brought out before.

BY MR. TALASNIK:
Q. Was there a progression or deterioration from when Gloria initially discussed Rick up to the time where the assault occurred and Rick moved out?
A. Yes. You could see a change in her.
Q. Did you have any discussions -- oh.
I believe also in response to questions from Mr. Davis you indicated that there were occasions where either you saw bruises on Gloria or you heard her tell you you about other instances of abuse other than the incident in March that gave rise to him moving out. Am I understanding that right?
A. Yes.
Q. There were, therefore, occasions other than March where Gloria had visible bruises?
A. Yes.
Q. How many?
A. Two or three bruises.
Q. And would these have been occasions towards or as you approached the March 16th date?
A. Yes.
Q. And did she indicate to you how those

bruises had been caused?
A. Yes. The one she -- she -- Gloria didn't like the world knowing her business, as nobody does, and she -- until she came face to face to me over the phone, she initially said that she had fallen down the steps. She had a spiral staircase. When she saw me in person, then she told me the story that he pushed her down the steps and that's how she broke the finger and got the bruises on her face and hurt her neck.
Q. In describing Gloria's approach or Gloria's attitude toward Rick, you said she characterized him as somebody who would not take no for an answer when she was discussing she wanted him out of her life?
A. Right.
Q. Did you ask her what she meant by that?
A. Well, I didn't ask her, but I said, Gloria, why can't you just get rid of him. She said, because he said I'll decide who is going to break up with who. I'll tell you. You don't tell me.
Q. You were asked about a letter that you

apparently intercepted that was written from Rick and addressed to Gloria. Do you recall that?

A. Yes.

Q. And you made the decision that you weren't even going to bother giving it to her?

A. No. She received -- I know she received two. She received one and it was sealed and I handed it to her and she ripped it up in front of me and threw it in the trash. Then she got another one and I read it and I gave it to her and she didn't even want to read it. Initially we ripped that up and threw it away, so she didn't really see either one of them.

Q. With respect to the phone call that you got, was it that you determined not even to bother giving her the phone number, the message?

A. Oh, yes. She didn't want to have any parts of him.

Q. Why would you take it upon yourself to decide that Gloria didn't want that phone number after she had been assaulted?

A. Because she was upset and she totally

didn't want him near her, around her, didn't want to hear from him or anything. I didn't want her to, either. She was a nervous wreck.

Q. Now, you also indicated to Mr. Davis that when Gloria came to you the first night of the assault or after the assault to explain that she wouldn't be able to come to work and to describe what had happened to her that her mother was with her, do you recall that?

A. Yes.

Q. Now, on any of the other occasions when you talked about the assault charges, was Gloria's mother there?

A. Not when she was at work with me. When she told me the story, her mother was not there, no.

Q. So when Gloria was at work and you were there supervising her and she told about the charges she had brought against Rick Highlander, her mother wasn't there, was she?

A. Not at all.

Q. And when she told you she intended to follow through with the charges and testify in court, her mother wasn't there, was she?

A. No, she wasn't.

MR. TALASNIK: No further questions.

THE COURT: Mr. Davis?

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Mrs. Henderson, you indicated Mr. Highlander was a Dr. Jekyll and Mr. Hyde when he was drinking. Is that true?

A. Yes.

Q. Would you explain what you mean by Dr. Jekyll and Mr. Hyde?

A. Well, because when he would drink, there was no reasoning with him. He would get very foul with his mouth and I would ask him a couple of times, you know, to chill out or calm down or don't use that kind of language and he would say sorry, sorry, and he would stop momentarily and if he got rolling into another conversation, he would start it up again. I basically, whether it be my position or whatever it was, could make him not use that kind of language when he was in the store or wherever we were. But he -- he didn't really want to listen to people when he was that way.

Q. Did you indicate to Mr. Talasnik that

Ms. Simonelli broke her finger when she fell down the stairs?
A. Yes.
Q. Were you talking about this last incident, March 16?
A. Yes.
Q. Did she tell you how her finger was broken?
A. Well, I said on the phone she said I fell.
Q. Yes.
A. When she came to me in person, she told me that she was pushed down the stairs by Rick.
Q. And that caused what injuries to her?
A. Her neck, her face, her finger.
Q. So she indicated to you that the injuries she received was, with regard to the March 16th incident, was as a result of Rick pushing her down the stairs?
A. And beaten up. She didn't get all that from the steps.
Q. Mrs. Henderson, you don't know what she got from the steps, do you? If she was pushed down the steps, do you?

A. What do you mean I don't know?
Q. You just sat here and you just said she didn't get all that from the steps. My question to you is that you don't know what she got from the steps, if she was even pushed down the steps, do you?
A. She told me she was pushed down the steps.
Q. My query is, you don't know what she received from the steps, do you?
A. She did that to herself?
Q. I didn't ask you that. I said you don't know what injuries she received when she went down the steps, according to you.
A. I don't know. I wasn't there, I don't know.
Q. Do you know for a fact she went down the steps?
A. I wasn't there.
Q. Do you know if she told the police she was pushed down the steps?
A. No, I don't.
Q. Do you know if she told her parents if she was pushed down the steps?
A. No, I don't.

Q. Did you ever see the police report she filed?
A. Why would I?
Q. The question --
THE COURT: Did you ever see it?
THE WITNESS: No.
MR. DAVIS: That's all, your Honor.
THE COURT: Mr. Talasnik?
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Ms. Henderson, in addition to describing for you whatever happened with respect to the steps, did Gloria tell you that Richard Highlander beat her up?
MR. DAVIS: Your Honor, I object to the leading question.
THE COURT: It was a leading question, Mr. Talasnik.
BY MR. TALASNIK:
Q. In addition to telling you about what may have happened with respect to the steps on March 16th, did Gloria tell you anything else about how she got her injuries?
A. Yes.
Q. What did she say?

A. She said that he kept her in the house, kidnapped her in her own house was the word she used.

Q. Anything else with respect to how she got her injuries?

A. And that he beat her all over the house and wouldn't let her out.

MR. TALASNIK: Thank you, no further questions.

THE COURT: Mr. Davis?

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Did she tell you how she got out the next morning?

A. She said she convinced him to let her go to the doctor's.

MR. DAVIS: That's all.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Nothing further.

THE COURT: You may step down.

(Witness excused)

MR. TALASNIK: The State calls Diane Pond.

DIANE POND, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Ms. Pond, whereabouts do you live now?

A. I live in Ocean City.

Q. With whom do you live?

A. My children.

Q. I want you to think back to the latter part of 1987 and the early part of 1988 and tell us where you were working at that time.

A. I worked for a developer at the Atlantic Palace.

Q. What is the Atlantic Palace?

A. A high rise condominium.

Q. What kind of job did you have at the Atlantic Palace?

A. I was an office administrator.

Q. Do you remember about when you started working there?

A. December of '83.

Q. Do you recall about when you completed your work there?

A. June of '88.

Q. So in the latter part of '87 and early '88 you were on a day-to-day basis at that location?

A. Correct.
Q. Whereabouts in Atlantic City is Atlantic Palace?
A. New York Avenue new and boardwalk.
Q. Now, in your position with Atlantic Palace, would you have occasion to have contact with workers who were completing various jobs at that location?
A. Yes.
Q. And in that capacity, did you come to know an individual by the name of Richard Highlander?
A. Yes.
Q. Is the person that you were introduced to or met as Richard Highlander in the court today?
A. Yes.
Q. Could you identify him, please?
A. Yes.
Q. Would you do so?
A. Yes.
Q. Point him out, please?
A. Him.
THE COURT: The record reflects the witness pointed to the defendant.

BY MR. TALASNIK:

Q. From what capacity, did you meet or come to know Richard Highlander.

A. He was employed by our developer.

Q. To do what, if you remember?

A. Well, he was like a subcontractor.

Q. And would you see him on an occasional basis, regular basis in that capacity?

A. Pretty much a regular basis.

Q. Enough that you knew who he was?

A. Yes.

Q. Did you ever have conversations with him about work or about anything else else?

A. Just general conversations.

Q. Now, I want to focus your attention on the early part of April, 1988, and ask whether you recall an incident where Mr. Highlander came into Atlantic Palace and spoke with you breach briefly.

A. Yes.

Q. What was the subject matter that he spoke to you about on this occasion in early April of 1988.

A. Well, it was just general conversation and I had just asked him how Gloria was.

Q. Did you know that he had at one time be seeing a young woman named Gloria Simonelli?
A. Yes.
Q. And you asked him how Gloria was at this occasion?
A. Yes.
Q. At the time that you asked him, did you know that the two had separated?
A. Yes.
Q. When you asked him how Gloria was, how did he respond?
A. He just said he hadn't seen her.
Q. Did he discuss with you any concerns he had about Gloria?
A. Well, he was upset.
Q. Did he say what it was he was upset about?
A. Well, he was upset over the relationship, that it had been severed, and he was also upset she had placed charges against him.
Q. He indicated that he had some upset or concern because she had brought charges against him?

A. Yes.
Q. And what was it about her having brought charges against him that he said upset him?
A. Well, he just felt if he was convicted, that he could maybe go to prison.
Q. And he told you that?
A. Yes.
Q. Did he refer to anything else about the charges and the prospect of those charges causing him to go to jail?
A. Not really.
Q. After he made those statements, did you have any further conversation?
A. Just general conversation.
Q. Did he talk to you about any efforts he was going to make to try to get the charges dropped?
A. At another time.
Q. All right. Let's get to this other time, then. Do you recall seeing Mr. Highlander again, this time on Wednesday, the 20th of April, 1988?
A. Yes.
Q. And, again, were you working and he

came into the office?
A. Yes.
Q. What sorts of discussions did you have with him there regarding these charges?
A. Again, it was just general conversation.
Q. You are going to have to tell us what you mean.
A. He just said that he was going to see an attorney about approaching her family to drop the charges.
Q. Okay. He volunteered that information to you?
A. I don't know he volunteered it. I think we were just basically talking.
Q. Okay. In the course of the conversation, he told you that he was going to go get an attorney?
A. Yes.
Q. And that the purpose of getting that attorney was to do what?
A. To talk with her family.
Q. Whose family?
A. Gloria's family.
Q. And to talk with Gloria's family about

what?
A. About dropping the charges.
Q. Okay. Is that the last time that you saw Richard Highlander in person?
A. Yes.
Q. Now, sometime later into the month of May, did you come to learn that Mr. Highlander had been arrested?
A. Yes.
Q. And did you continue to work in the Atlantic Palace?
A. Yes.
Q. In the capacity that you've described for us working at the Atlantic Palace, did you receive any phone calls that were placed by Mr. Highlander to someone at your facility?
A. Yes. He had called several times for my manager.
Q. And on any of those occasions, did you yourself talk to him at all?
A. One time.
Q. Tell us what he said that one time you did talk to him.
A. I asked him how he was doing and he asked me if anyone had spoken to us, if we had

been questioned.
Q. Okay. After he asked whether you had be questioned, what else did he say?
A. Well, he was sorry we were involved and he had just said had anybody hurt him in any way, his character. I said no. He just said, well, I felt that you guys at the office were my pals and I hope you felt the same about me and I said we did.
MR. TALASNIK: I have no further questions, thank you, your Honor.
THE COURT: Mr. Davis.
CROSS-EXAMINATION
BY MR. DAVIS:
Q. Ms. Pond, what relationship did you have with Richard at the time that you were working.
A. Just business relationship.
Q. And you knew -- what was your position?
A. I was an office administrator, but I did work in the reception area of the office.
Q. Okay. And it was through this position that you met Mr. Highlander?
A. Yes.

Q. Through this position, did you have contact with him on a regular basis?
A. Pretty much.
Q. Did you grow to know him somewhat throughout this relationship?
A. Well, sometimes he would be sitting, you know, near my desk, waiting to see my manager, who was usually busy on the phone or with clients and he would need to see him about something so he would sit by my desk. And we would just have general conversation.
Q. It was during these periods of time he you and he would talk back and forth?
A. Yes.
Q. It was also during this period of time that you learned that he had a girlfriend by the name of Gloria Simonelli?
A. Yes.
Q. Did you know Ms. Simonelli?
A. I saw her on occasion.
Q. Where would you see her?
A. She would sometimes could into the office to meet with Rick, to bring him his lunch.
Q. Now, when she would come into his

office to bridge him his lunch, was Rick already there?

A. Yes. He was usually working.

Q. When she would come in to bring him his lunch, did you notice the relationship between Rick and Gloria?

A. Yes.

Q. And how did it appear to you?

A. Well, they were -- you know, they were a couple. They saw each other. They dated, I guess. I really don't know. I just knew they went together.

Q. Well, at any time during the periods of time that Gloria came in, did she appear to be frightened to you, frightened of Rick Highlander?

A. No.

Q. Did she ever indicate to you that she was frightened of Rick Highlander?

A. No.

Q. Now, did Mr. Highlander discuss his relationship with Gloria to you?

A. Not in detail.

Q. Well, from his conversation, did you know his feelings for Gloria?

A. Well, I felt that he cared about her.
Q. Now, you said that one day, this was the day prior to April 20th -- do you know when it was?
A. It was about a week and a half to two weeks prior to that.
Q. Prior to April 20th?
A. Yes.
Q. And you said that Mr. Highlander appeared to be upset?
A. Huh-huh.
Q. And you indicated that one of the reasons he was upset was because the relationship had been severed?
A. Yes.
Q. Did he advise you that the relationship had been severed?
A. No, he didn't.
Q. How did you know that it had been severed?
A. My office manager had mentioned it.
Q. Okay. And you also indicated he was upset because the young lady signed the complaint against him?
A. Yes.

Q. Did he advise you of that?
A. He mentioned it, yes.
Q. And then you indicated again that you spoke to him again on the -- before we get to the 20th, at this that first meeting about a week and a half before the 20th, was that about the entire topic of conversation?
A. Yes.
Q. Then on the 20th, April 20th, 1988, you indicated he again spoke to you about this relationship; is that true?
A. Yes.
Q. And he indicated that he was going to get an attorney to intercede in an attempt to have the charges dropped.
A. Yes.
Q. And was that about the entire gist of that conversation?
A. Yes. He just was there to see my boss again and he had left for South Carolina and so he just sat there and talked briefly.
Q. What type of work did Rick do for your boss?
A. A lot of different work. He brought in subcontractors also for work that he was

unable to do.
Q. To the best of your knowledge, how long had Mr. Highlander be working there while you were there?
A. Approximately the fall, September, October. About six months.
Q. You say that subsequent to April 20th you received a telephone call from Mr. Highlander.
A. No. I believe that was after.
Q. I said after?
A. I'm sorry.
Q. Subsequent.
A. Eye I'm sorry.
Q. You received a telephone call from Mr. Highlander. Do you know whether that was?
A. That was right after he was brought back to Atlantic City.
Q. After he was brought back to Atlantic City?
A. Yes.
Q. And that was just to say that he was sorry you were involved?
A. Yes.
Q. At any time that Mr. Highlander was in

your presence with Gloria, did you see him use any force upon Gloria?

A. No.

Q. Any harsh words, to the best of your knowledge?

A. No.

MR. DAVIS: That's all I have.

THE COURT: Mr. Talasnik?

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Ms. Pond, you would never have had occasion or would you ever have had occasion to be in Gloria's condominium in Margate?

A. No.

Q. Did you ever have occasion to talk to Gloria socially?

A. Just briefly one time around Christmas.

Q. Did you ever have any social relationship with her outside of that?

A. No.

MR. TALASNIK: No further questions, your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: I have nothing, your

Honor.

THE COURT: You may step down. Thank you very much.

(Witness excused).

THE COURT: Ladies and gentlemen, we will take a brief recess at this point for five or ten minutes so everybody can catch their breath or whatnot and we will be right back.

(Whereupon, the jury leaves the courtroom)

THE COURT: Mr. Talasnik, what's up and coming?

MR. TALASNIK: Your Honor, the next witness is the one I indicated; Jennifer Saitz.

THE COURT: Okay. You should be able to finish her and somebody else this morning, I believe.

MR. TALASNIK: Yes. I have three other witnesses here and ready to go.

THE COURT: All right. We will be back to you in a few minutes. I'm trying to arrange everything on Friday for the morning so we can have a few hours for testimony on

Friday. That's what I'm trying to do.

MR. TALASNIK: All right. There are some witnesses that because of their distance won't be physically available to me until Monday. If there are -- if I run out of witnesses by the end of the day Thursday, you know, I just won't have anybody to put on on Friday. That's what I'm indicating.

THE COURT: 416 witnesses on the list and you will run out of people by Thursday afternoon?

MR. TALASNIK: I don't know. It depends on how the next two days go.

THE COURT: All right. We'll see how it goes.

(Brief recess)

(Whereupon, the jury enters the courtroom room)

THE COURT: Mr. Talasnik, call your next witness.

MR. TALASNIK: Thank you, your Honor.

Jennifer Saitz.

JENNIFER NATALIE SAITZ, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. TALASNIK:
Q. Ms. Saitz, will you tell us where you live?
A. I live at 2 Berkshire Avenue in McKee City.
Q. How long have you lived in Atlantic County?
A. All my life.
Q. What kind of work do you do?
A. Hotel sales.
Q. How long have you been in that line of work?
A. About three-and-a-half, four years.
Q. Do you know a fellow by the name of Rick Highlander?
A. Yes, I do.
Q. Is the fellow you know as Rick Highlander in the courtroom today?
A. Yes.
Q. Could you point him out please for the jury?
A. Right over there in the maroon shirt.
THE COURT: Pointing to the defendant.

BY MR. TALASNIK:

Q. How did you come to know Rick Highlander?

A. I was employed by Comfort Inn in Absecon in the accounting department and I was the supervisor there and took care of accounts payable. Rick was the operator owner of A-plus Maintenance and he had the contract to do the window cleaning and we were slow on some bills at times in the slow season and Rick would call for checks and things for payment and he would call me.

Q. Okay. Through those calls in your professional capacity, you came to know and recognize him?

A. Yes, I did.

Q. Did Rick know your parents as well?

A. Yes. He knew my mother and my stepfather.

Q. Now, I want to direct your attention to Wednesday, the 20th of April 1988.

A. Okay.

Q. And ask you whether you got a call from Rick Highlander that day.

A. Yes, I did.

Q. Do you remember about what time of the day it was?
A. It was middle of the afternoon, about two, three o'clock in the afternoon.
Q. And what did Rick ask of you during this phone call?
A. He called to ask me if I could be so kind as to drive him to his lawyer's since he was unable to drive.
Q. And was there any further explanation on the phone other than he wanted you to drive him to his lawyer's?
A. No.
Q. Did you agree to do that?
A. Yes, I did.
Q. How did you meet Rick later that day, the 20th of April 1988?
A. Okay. After the phone call, he said, well, I'm in Atlantic City now, can you pick me up on South Carolina Avenue and I said sure. He told me that the lawyer would be in Northfield. I went down after work around five o'clock and picked him up.
Q. When you picked up Rick Highlander at about five o'clock on the 20th, how did he

seem to you?
A. What do you mean how did he seem?
Q. What was your impression of him? What was his demeanor? How was he acting?
A. Lost. And kind of -- I don't want to say drunk, but -- yeah, maybe. He smelled of alcohol.
Q. Okay. You let him into the car?
A. Yes, I did.
Q. And at his request, where did you go?
A. We went to the lawyer's in Northfield on Jackson Avenue.
Q. During the course of the drive, from the time you picked him up until the time you got him to his lawyer's, this evening of April 20th, did you have any conversation with him?
A. Sure.
Q. What sorts of things did you talk about in the car on the way to the lawyer's office?
A. The conversation basically was around Gloria.
Q. What did he say about Gloria?
A. Well, he went on to tell me how much he loved her and she meant the world to him

and how he wanted to marry her and how much he loved her and that there is a possibility that he could go to jail because she was pressing charges against him.

Q. What did he say about this pressing charges business?

A. I don't know. I don't remember if anything was said.

Q. Other than that she was pressing charges against him?

A. Huh-huh.

Q. And he made some reference to going to jail? What was all that about?

A. That because she was pressing charges and he was on probation, there is a possibility of him going to jail.

Q. How did he react to the specter of going to jail over these charges that Gloria was pressing?

A. He was very upset.

Q. He was upset at the prospect of going to jail?

A. Yes, he was.

Q. Did he indicate that there was a connection between that -- what he was upset

about and you taking him to the lawyer's office?

A. Can you repeat the question?

Q. Did he make any kind of a connection between why he was upset, namely he didn't want to go to jail over these charges, and his request that you take him to a lawyer's office?

A. This was the lawyer that was defending him, I think.

Q. Okay. Did you, in fact, arrive at the lawyer's office with Mr. Highlander at his request?

A. Yes, I did.

Q. And what did you do when you got there?

A. We sat in the reception area for about half an hour and then the -- I think it was the receptionist said he can go in and speak with the lawyer now and he went in.

Q. And you waited in the reception area?

A. Yes.

Q. Do you recall about how long a time Mr. Highlander was with his lawyer?

A. Maybe a half hour or so.

Q. Did you see him come out into the reception area with his lawyer?
A. I don't remember seeing this lawyer.
Q. Do you remember Rick coming out into the reception area?
A. Yes. He came out to the reception area when he was through.
Q. How did he appear when he came into the reception area from talking with his lawyer?
A. Looked very upset.
Q. What do you mean he looked very upset?
A. He was upset. He was upset.
Q. What was it about him that causes you to tell us today that he looked upset, that he was upset?
A. His facial expression maybe.
Q. Anything else?
A. Well, he told me he was upset.
Q. Okay. Good enough.
Did he then ask you to drive him anyplace else?
A. He asked me if I wanted to grab a bite to eat. He would like to take me out to dinner for me taking him to the lawyer's and I

said that would be fine.
Q. Where did you determine or he determine to go?
A. We drove to the Crab Trap in Somers Point is where we had dinner.
Q. Between the time you left the lawyer's office and the time you arrived at the Crab Trap in Somers Point, was there some discussion in the car between you and Rick?
A. Yes, there was.
Q. And did that discussion involve why he was upset?
A. He was upset from the conversation that the lawyer didn't give him much hope, that if Gloria should press charges, he would probably go to jail and he was upset. He felt hopeless from the conversation with the lawyer.
Q. Did he talk to you while he was in the car and while he was indicating how upset he was about having to possibly go to jail if she pressed these charges, about what he might do?
A. The conversation in the car as well as the conversation throughout the night was basically the same conversation over and over,

how much he loved her and how much he couldn't believe that she was doing this to him and that -- just how much he loved this girl. And then also the fact that he didn't want to go to jail and he couldn't believe she was doing this to him.

Q. When you got to the Crab Trap, did you, in fact, have dinner together?

A. Yes, we did.

Q. During the course of dinner, did you have conversation with Mr. Highlander?

A. Yes, we did.

Q. What did you talk about?

A. Gloria.

Q. What sorts of things?

A. Dinner conversation was, again, the same thing. He loved Gloria, he would have done anything for her, he cannot believe she is doing this to him and he didn't want to go to jail.

Q. Okay. During the course of the conversation in indicating he did not want to go to jail over the charges that Gloria had brought, did he indicate to you that he was thinking about doing something?

A. Yes.
Q. What did he say?
A. He said he would kill her and kill himself.
Q. That he would kill her and kill himself?
A. Huh-huh.
Q. Why?
He just said it?
A. Yes.
THE COURT: The record will reflect when asked why, the witness gave a shrug with the shoulders and hands.
BY MR. TALASNIK:
Q. Did he say anything specifically about how he was going to kill her?
A. He said he would shoot her and then shoot himself.
Q. Did he say specifically where he was going to shoot her or how he was going to shoot her?
A. He said he would shoot her three times.
Q. Where?
A. The head, neck and chest. And then

shoot himself.
Q. Did you try to talk him out of this idea?
A. Yes, I did. He had been drinking a lot -- he must have had three vodkas with olives while we were at the Crab Trap and he was just drunk and, you know, you talk to somebody and say, oh, that's crazy, stop talking like that, you've got a lot going for you. You're a great guy, you're this, you're that. You try to, you know, pick them up a little bit when somebody is down so low. I was trying to pick him up and build him up a little bit.
Q. You told us Rick mentioned he didn't want to go to jail over these charges. Did you discuss with him maybe a better approach to the specter of going to jail?
A. Well, what I did was try to talk to him and say, look, so what if you go? He was so destroyed by the way Gloria had hurt him -- if you go, so you go for a little while. Take it easy, take -- relax. Start your life over. That's how the conversation went on.
Q. When he was talking about not wanting

to go to jail, did he disclose any anger?
A. No.
Q. Did he appear to be upset at anyone in particular over the prospect of going to jail?
A. What do you mean? Can you rephrase the question? I don't understand.
Q. Was he upset with someone or more than someone over the fact that he might have to go to jail?
A. I think -- I think -- he was upset with Gloria's parents and felt they were really pushing her, that maybe it was her parents.
Q. Did he indicate being upset with Gloria as well?
A. He was upset with Gloria. He was hurt with Gloria.
Q. Did you have any discussion with him or did he have any questions of you about whether perhaps Gloria might be seeing someone else?
A. He asked a general question, as a friend, do you think she might be seeing somebody else.
Q. Do you recall the balance of that

conversation, about whether he seriously thought she was seeing someone else.

A. And I said that she might be. I'm sure she's just as hurt. You spent a lot of time together and I'm sure she's just as hurt and maybe she's going out to have a good time to keep her mind off of things.

Q. Was there ever any discussion, any more discussion about a gun?

A. What do you mean?

Q. You told us earlier that Rick said that he would shoot Gloria, that he would shoot her three times?

A. Huh-huh.

Q. The head, neck and chest. At the time that you then progressed and you are talking about whether Gloria is seeing anyone else, did Rick mention a gun again?

A. He had said he didn't feel she was seeing anybody else because he followed her one night, watched her leave the Tropicana, leave her work.

Q. He told you that he had followed her?

A. He had seen her leave the Tropicana after work.

Q. And that's why he felt that she probably wasn't seeing anyone else?
A. Because she was alone.
Q. When he told you that he had followed her one night and had seen her leave Tropicana, did he indicate whether he had anything with him?
A. Yes, he did.
Q. What did he say he had with him?
A. A gun.
Q. Did he say what kind of gun?
A. A 357.
Q. Did he indicate what it was that he was going to do with that gun?
A. No. He just said he sat there.
Q. That he sat there having waiting for her to leave work?
A. No. He didn't say that.
Q. Well, what did he say with respect to her leaving work and the gun?
A. He just said he just sat there while she walked out and he just sat there shaking and he had the gun with him, but he just sat there and looked at her.
Q. After you had dinner at the Crab Trap,

where else did you go?
A. From there we went to the Waterfront in Somers Point and also to Steamers in Somers Point.
Q. What went on at these two locations?
A. Well, after dinner we went to the Waterfront where we sat in the lounge area and he continued to drink and I just sat there and tried to pick him up a little bit and tried to pick him up and tell him he's a good person and try to help him over his hurt, over what Gloria was doing to him.
Q. Was there more conversation at those locations about the charges that Gloria had brought against him?
A. It was just over and over again. He was drunk and he just kept repeating himself over and over again about how he loves her and would have done anything for her and he can't believe she is doing this and why is she doing this and why is she doing this, why won't she drop the charges? He couldn't understand because he wanted to marry this girl and give this girl the world and couldn't understand what he did or why she was being so hard and

so cold and cruel to him.
Q. Now, you had never had any kind of social relationship with Gloria Simonelli, had you?
A. No, I hadn't.
Q. Did you ever meet her at all?
A. I met her once.
Q. But that was it?
A. Right.
Q. Did Mr. Highlander admit that he knew that Gloria had signed or pushed criminal charges against him?
A. Did he say he knew that?
Q. Yes. That he was aware she had brought criminal charges against him?
A. Well, I don't know, I don't know. I don't know.
Q. Did he discuss with you that she had brought criminal charges against him? That Gloria had brought criminal charges against him?
A. I don't know what the charges were, but I know that was the reason why he was going to the lawyer.
Q. Okay. So -- okay.

Did he discuss with you that those charges could result in his going to jail?
A. Yes.
Q. And that was the thing that he did not want to have to do?
A. He did not want to go to jail.
Q. Okay.
MR. TALASNIK: I have no further questions, thank you, your Honor.
THE COURT: Mr. Davis?
CROSS-EXAMINATION
BY MR. DAVIS:
Q. Ms. Saitz, how long up to the point that you went out with Mr. Highlander on the 20th, how long had you known him prior to that date?
A. Probably about a year, year-and-a-half.
Q. And during that year, year-and-a-half period, how often would you speak to Mr. Highlander?
A. Once a month.
Q. Once a month?
A. Yes.
Q. Bill time?

A. Bill time.
Q. And who did you say you worked for?
A. The Comfort Inn in Absecon.
Q. You indicated Comfort Inn was slow with the money?
A. Yes.
Q. So I'm sure you got a lot of complaints?
A. I got a lot of complaints.
Q. What was Mr. Highlander's reaction when the money was slow?
A. He --

MR. TALASNIK: I will object on relevance.

THE COURT: Sustained.

BY MR. DAVIS:
Q. Did you ever have any trouble with Mr. Highlander during the course of your working there?
A. No, I did not.
Q. And you knew him well enough to go out with him on April 20th?
A. Yes.
Q. Now, during this year or so or year-and-a-half that you knew Mr. Highlander,

prior to April 20th, had you ever seen him in this down condition before?

A. No.

Q. This is the first time you had seen him in this down condition?

A. Huh-huh.

Q. Prior to April 20th, had you ever discussed Gloria with him?

A. No.

Q. Did you know about Gloria?

A. Yes.

Q. And how did you know about Gloria?

A. Well, through my mother.

Q. Basically through your mother?

A. Right.

Q. Now, you have indicated to Mr. Talasnik that you did see Gloria on one occasion or you were in her presence?

A. Yeah, kind of.

Q. Who were you in her presence with?

A. Gloria and Rick came to pick up a business contract and she was on the porch and I was just walking by. I didn't actually meet her. I just saw her.

Q. Now, approximately what time did you

pick up Rick on April 20th?
A. About 5:15.
Q. In the afternoon?
A. Yes.
Q. And you indicated that he appeared to be drinking at that time?
A. Yes, he was.
Q. Did you question him as to whether or not he had been drinking prior to meeting you?
A. He told me he was drinking all day.
Q. All day long?
A. Huh-huh.
Q. And when -- when he called you on the phone, did you notice anything about him?
A. No. He just asked if I could take him to the lawyer and I said sure.
Q. When did you first notice that Rick wasn't the normal Rick as you knew him?
A. When he got into the car and I smelled the alcohol.
Q. And that's when he commenced talking about Gloria?
A. Right.
Q. And as you indicated to Mr. Talasnik, he talked about how much he loved her and how

much he had done for her and what he wanted to give her?
A. Yes.
Q. Now, in answering to Mr. Talasnik's questions about going to jail, you indicated to Mr. Talasnik that Mr. Highlander didn't want to go to jail.
A. Right.
Q. But when you think about the entire conversation from the time that you met Rick that day until the time that you let him off that night, which was about how many hours?
A. About five or six hours.
Q. Looking at that five or six hour period of conversation, and I would assume it was mainly with regard to Gloria --
A. Yes.
Q. Would you say that his main concern was the break-up with Gloria as opposed to going to jail?
A. I think that they were both equal.
Q. They were both equal?
And when he would talk about what Gloria did to him, what would he say?
A. He would say how bad he hurt her --

how bad she hurt him and he just couldn't understand it because they were together for a while and he just really loved this girl with all his heart and she had just done nothing -- she was nasty to him, she was mean to him.

Q. Did he say what she did to hurt him?

A. I can't remember -- I can't remember everything.

Q. When he talked about marrying her, did he -- what did he say about that?

A. Well, he was ready to purchase a large diamond ring for her because he wanted Gloria to be his wife.

Q. Did he indicate anything else about the future with Gloria?

A. He wanted to spend the rest of his life with her.

Q. Now, you've indicated you went to an attorney's office with him?

A. Yes, I did.

Q. Now, you were, as you've indicated to Mr. Talasnik, you were not privy to what was said in the room?

A. No, I was not.

Q. And you don't know what matter was

being discussed between Mr. Highlander and his attorney?

A. No.

Q. And you indicated that when Mr. Highlander came out, he was still upset?

A. Right.

Q. But when he came out of the office, was he in the same condition as he was in when he went into the office?

A. I think he was a little worse.

Q. And did he indicate to you at that point what his upsetment was about?

A. Yes. He felt hopeless as far as the lawyer went. He didn't feel very positive about it.

Q. And did he, at that point, did he feel hopeless about getting back with Gloria?

A. Yes.

Q. Was this also part of this conversation?

A. Yes, it was.

Q. Did he talk to you in any respect as attempting to contact Gloria or whether he contacted Gloria?

A. He was not allowed to contact Gloria.

Q. Did this bother him?
A. Yes, it did.
Q. Now, you've indicated that he threatened to kill Gloria and he also threatened to kill himself?
A. Yes, he did.
Q. Up to this point in your relationship with Mr. Highlander, did you ever, ever hear him talk like this before?
A. No, I did not.
Q. Did you ever hear him threaten to kill himself?
A. No.
Q. Anyone else? You've got to say yes or no.
A. No.
Q. Were you frightened at that point of Mr. Highlander?
MR. TALASNIK: Objection. Relevance.
THE COURT: Objection is sustained.
MR. TALASNIK: Thank you, your Honor.
BY MR. DAVIS:
Q. At that point, did you attempt to

leave Mr. Highlander?
A. No, I did not.
Q. Did you remain with him for the next several hours after he mentioned this?
A. Yes, I did.
Q. Did you take him serious?
MR. TALASNIK: Objection. Relevance.
THE COURT: I will permit that.
A. No, I did not.
Q. Why didn't you take him serious at that time?
A. Because he had been drinking an awful lot.
Q. Now, you further indicated that he said he was destroyed by Gloria. Did he indicate what he meant by that?
A. He was hurt. He was torn to pieces. The woman that he loved just -- that was it. She was hurting him this way.
Q. And you further indicated to Mr. Talasnik that he appeared to have no anger with regard to the situation.
A. No. Disbelief.
Q. Disbelief that this entire situation

was happening to him?
A. Yes.
Q. Now, you also indicated he did have concern about Gloria's parents?
A. Yes.
Q. What was that concern?
A. He felt that -- well, she moved back with her parents -- he felt that they were a big part of it, pressing charges against him.
Q. Now, you say that after you left the Crab Trap and you had dinner there, you then went to the Waterfront and Steamers.
A. Yes.
Q. Is it fair to say while you were at these three locations Mr. Highlander was drinking?
A. Yes.
Q. Did he constantly drink the entire evening?
A. Yes.
Q. And at the termination of the evening with him, where did you take him, if anywhere?
A. Well, he had -- after Steamers, he had sometime during that mentioned he was low on cash and that he would just find space to stay

in Atlantic City and he had inquired about the Howard Johnson's in Absecon. I said that is a nice place, why don't I drop you off there. And so I know he would be okay there. So that's what I did. I then took him to the Howard Johnson's in Absecon.

Q. Who paid for the room?

A. I did.

Q. Why would you pay for the room?

A. Because the gentleman hardly had any cash on him, so I wrote a check for him.

Q. Had you ever seen him in this condition before unable to take care of himself before financially?

A. No, I had not.

Q. Did there come a time when you spoke to him again after that evening?

A. Yes, I did.

Q. When was that?

A. That was the two days after that which was Friday.

Q. And what was the topic of conversation then?

A. He had called me that day to thank me for taking him to the lawyer's and thanking me

for all that I had done for him and that he said he had gone back to work and he hadn't been drinking and he just feels a lot better and thanking me for helping him out.

Q. After Mr. Highlander broke up with Gloria Simonelli, did you ever have occasion to see Ms. Simonelli at the Tropicana and Sizzler's?

A. Yes.

MR. TALASNIK: Objection. Beyond the scope of direct.

THE COURT: Sustained.

MR. DAVIS: I will recall the witness or make her my witness at this point.

THE COURT: Not at this point.

MR. DAVIS: I will recall her, then.

THE COURT: All right.

MR. DAVIS: That's all I have.

THE COURT: Mr. Talasnik?

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Jennifer, you told us that Rick had some evidence that he had been drinking as early as when you picked him up to take him to the lawyer's office?

A. Yes.
Q. At that time, was he so drunk that he didn't recognize you?
A. No. He recognized me.
Q. Was he so drunk that he couldn't get into the car?
A. Well, he was having a hard time getting into the car because he had a broken ankle, but --
Q. But it wasn't as a result of being so drunk he couldn't get into the car?
A. No.
Q. Was he so drunk that he couldn't tell you where the lawyer's office was?
A. No. He knew where it was.
Q. Was he so drunk that he couldn't get out of the car and go to the lawyer's office?
A. No.
Q. Was he so drunk that he couldn't speak to you in a coherent way?
A. He was a little sluggish.
Q. Were you able to understand him?
A. Yes.
Q. He was able to communicate with you?
A. Yes.

Q. Okay. And later, was he so drunk that you didn't understand him when he said that he didn't want to have to go to jail?
A. No. He just was talking in circles.
Q. Okay. But you were able to understand those words; right?
A. Yes.
Q. And he was able to say them?
A. Huh-huh.
THE COURT: Is that a yes?
THE WITNESS: Yes.
BY MR. TALASNIK:
Q. When he said that he would kill Gloria and then himself, you were able to understand those words?
A. Yes.
Q. And when he specified that he would shoot her three times in the three parts of the body, including the chest that he would shoot her at, you were able to understand that?
A. Yes.
Q. Okay. Now, he also -- was he so drunk he didn't know he was out of money or did he tell you that he was out of money?

A. When we were -- I think when he was taking his money out for dinner, that he was low and he said he was low because he hadn't been working due to his broken ankle.
Q. So he even recognized he was low on finances.
A. Huh-huh.
Q. Now, you were asked about the main topic of the conversation that night.
A. Huh-huh.
Q. And I believe your response was that between being upset and Gloria not going back with him and being upset at the prospect of going to jail over the charges, that those together were the main topics of the conversation?
A. Yes, they were.
Q. So by that, are you saying that he talked about fear of going to jail over the charges brought --
MR. DAVIS: Judge, I am going to object. There was no indication of fear going to jail. The word fear was never used.
THE COURT: I will sustain the objection to the question as a leading

question. That's all.

BY MR. TALASNIK:

Q. In relation to the amount of time that he spent talking about Gloria not being willing to come back together with him, in relation to that amount of time, how much time did he spend talking about not wanting to go to jail over the charges that Gloria brought?

A. They were both equal. It was time and time again, over and over, both things.

Q. Now, you were asked whether you took the threats seriously. Your name isn't Gloria Simonelli, is it?

A. No, it's not.

Q. You were asked whether or about how Mr. Highlander acted after he left the conversation with the lawyer and you said that he seemed hopeless. What was it that he seemed hopeless about, if you know?

A. I can't say.

Q. Did Mr. Highlander tell you anything after getting out from the lawyer's office that would help you decide that he seemed hopeless?

A. No.

Q. Did he discuss with you what he and his lawyer talked about?
A. The charges brought upon him, that were being pressed upon him.
Q. By?
A. Gloria.
Q. What about those charges did he talk to his lawyer about?
A. About getting them dropped.
Q. Did he talk to his lawyer about what would happen if they didn't get them dropped?
MR. DAVIS: We've been through this, your Honor. Objection.
THE COURT: Repetitive.
MR. TALASNIK: I think it was brought up on cross.
THE COURT: And covered on direct.
MR. TALASNIK: Very well, I have no further questions of the witness -- I'm sorry, your Honor. I believe this would be a new area.
BY MR. TALASNIK:
Q. You indicated to Mr. Davis that Rich had a problem not only with Gloria, but with Gloria's parents --

A. Yes.
Q. -- in this whole charge situation. During the course of the evening, you've already told us that he threatened to kill Gloria. Did he ever threaten to kill the parents?
A. No.
MR. TALASNIK: Thank you, your Honor. Nothing further.
THE COURT: Mr. Davis?
RECROSS-EXAMINATION
BY MR. DAVIS:
Q. Ms. Saitz, one further question.
A. Sure.
Q. Was this worry that Mr. Highlander had, was it about going to jail or was it more about the predominating emotion of being in love?
MR. TALASNIK: That is repetitive.
THE COURT: She has answered that question or one very similar to it three times, Mr. Davis.
MR. TALASNIK: Thank you, your Honor.
MR. DAVIS: Judge, if I could say

something? She had spoken about the topic of the conversation. But she never spoke in terms of the emotion of love.

THE COURT: I disagree. I think the question has been asked and answered. You may proceed.

MR. DAVIS: I have no further questions.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Nothing further.

THE COURT: You may step down, Ms. Saitz. Thank you very much for coming.

(Witness excused).

MR. TALASNIK: The State calls Robert Brooks.

M. ROBERT BROOKS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Brooks, how old are you?

A. 43.

Q. Where do you live now?

A. At 111 Lincoln Place, Atlantic City.

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

A. 14 years.
Q. What kind of work do you do?
A. I'm presently in the mortgage business and land development.
Q. Do you know a man by the name of Rick Highlander?
A. I do.
Q. Is the man you know as Rick Highlander in the courtroom today?
A. Yes, he is.
Q. Would you point him out, please.
A. The gentleman over there in the red plaid shirt.
THE COURT: Pointing to the defendant.
BY MR. TALASNIK:
Q. How long have you known Rick Highlander?
A. Oh, since about 1980.
Q. How did you come to know him?
A. I originally had a pawn shop in Atlantic City and he was a customer of mine there. Since then, I have known him in a different capacity, in a different business where he had his window cleaning business and

I had a regular cleaning business.
Q. Okay. During the course of the eight or so years that you have known Mr. Highlander, were you ever with him in a social setting?
A. On a few occasions, yes.
Q. Did you ever know Gloria Simonelli?
A. Yes, I did.
Q. How did you know Gloria Simonelli?
A. I was introduced to her by Richard Highlander.
Q. Do you know about when that would have been?
A. Well, I guess it must have been October, around, of 1987.
Q. Was that the only time you were introduced to her?
A. I think I met her on another occasion. That was the first time I was introduced to her.
Q. In October of '87?
A. Approximately.
Q. And sometime thereafter you met her maybe a second time?
A. I might have. I don't remember.

Q. But you don't have any further or did not have any substantial further contact with Gloria Simonelli after that one introduction and perhaps another visit?
A. No.
Q. Okay. Now, did you become aware that Richard Highlander and Gloria Simonelli broke up during the month of March of 1988?
A. Yes.
Q. How did you become aware of that?
A. I ran into Richard after they broke up and he told me some of the circumstances of them breaking up.
Q. What did Rick tell you?
A. He told me that they were drunk and he fell down -- that they fell down the steps or it was -- she broke her wrist and then there was a restraining order put on him because of that incident.
Q. And that was disclosed to you by Rick when you saw him after that incident?
A. Yes.
Q. Now, did you continue to have social contacts with Rick Highlander between that incident and the -- and his ultimate arrest

sometime in May of 1988?
A. Yes.
Q. How frequently would you see Rick from that point on?
A. Sometimes I wouldn't see Rick for, I guess, weeks at a time and then sometimes I would see him for a week straight, depending on our interaction at the time.
Q. When you would see him, were these business contacts or social contacts?
A. Both.
Q. They were both?
A. Right.
Q. During any of these business or social contacts, did Rick ever talk about any charges that had been brought against him?
A. Yes.
Q. What did he say?
A. We were on our way up to North Jersey and he mentioned to me that he was indicted on the last -- on that offense.
Q. What offense?
A. On assaulting Gloria.
Q. What did he say other than that he was aware he had been indicted for the charges of

assaulting Gloria?
A. Well, he was under a lot of stress because he was obviously afraid he was going to go to jail from it.
Q. Did he specifically say that he was afraid of going to jail over that?
A. Oh, yes.
Q. What was his tone of voice or the emotion that he displayed to you when he said that he was afraid he was going to jail over the indictment based on Gloria's charges?
A. Well, his emotion up until the time of her death, he became -- he wasn't as emotional when he first told me. He was very upsets and then he became much more emotional as the time went on.
Q. I'm afraid I don't understand. Can you explain that better us to?
A. He was a lot cooler in his demeanor when he first found out that he was indicted. He was obviously afraid and didn't want to go to jail. He was also upset about their recent break-up, but as time progressed, he became much more intense in his emotions.
Q. What do you mean he became more

intense in his emotions?
A. It bothered him much more, the entire issue. I guess the closer it came to him going to jail for the indictment, the more he became afraid of the consequences.
Q. Did he say anything that leads you to be able to tell us today that it seemed that the closer he got to him having to go to court the more afraid he became of the consequences?
A. Yes.
Q. What sorts of things did he say to you that lead you to conclude as you have just told us?
A. Well, he was trying to find a means of either getting out of the situation -- the indictment -- or leaving the area. Such as killing Gloria.
Q. He mentioned that as a possibility?
A. Yes.
Q. During any of the discussions that you had with Rick, did he ever indicate in any way any observations that he made of her at work?
A. We would drive sometimes -- I would be driving because Rick didn't drive -- I think he also had a cast on his leg at that time --

and he would go searching for her car. He would go searching just to see where she was essentially.

Q. What would this consist of?

A. We even drove through a parking lot of Tropicana one time just to see if her car was parked there.

Q. Whose idea was that?

A. Rick's.

Q. Did he tell you why he wanted to do that?

A. I just wanted to see if she was working. I vaguely remember that being the case. He was -- he had mixed emotions he brought forward to me, that he was concerned that she was going out with somebody else.

Q. And as a result he would ask you to drive him around?

A. Right.

Q. To look for her car?

A. Right.

Q. In relation to your first learning from Rick that he had broken up from Gloria, when approximately did these trips looking for her car take place?

A. I'd say about -- within a short period of time, within a week, two weeks of that. I don't think that there was that much time. I think it was six weeks between the time he got that indictment and she was murdered.

Q. Now, you've told us about a particular trip that the two of you made up to North Jersey?

A. Yes.

Q. When approximately was that within the framework of March, middle of March being the break-up and the death being towards the end of April?

A. I would say it was probably towards the end of March.

Q. Could it have been --

A. It could have been the beginning of April.

Q. During the course of that trip, was there any conversation by Rick about the charges that had been brought against him?

A. Yes.

Q. What sorts of things did he say?

A. Well, that's when he really had opened -- I think he had just gotten his indictment

papers and he was very concerned over what was going to happen to him, knowing that he had had problems before and he was able to work out his problems with the police before and this time he knew they wouldn't help him out any more, he couldn't do any deals with them.

MR. DAVIS: I'm going to object to this line.

THE COURT: Objection overruled.

MR. DAVIS: Pardon me?

THE COURT: Objection will be overruled.

BY MR. TALASNIK:

Q. What is it he said that causes you to conclude that he was concerned about these charges?

A. Well, he was concerned that he was going to go to jail and he knew it. He had a previous history -- he told me he had a previous history of restraining -- of having restraining orders put on him and he was concerned the indictment at this point was going to put him in jail.

Q. Okay. During the course of that trip, did he talk to you about any steps that he

might take in order to prevent him from having to go to jail?

A. Well, that's when he pretty much said that he thought his out of going to jail was to kill her. I think he was just -- that was one of his outs, one of his outs, killing her. He was trying to think of ways of not going to jail.

Q. And one of the ways was killing her?

A. Yes.

Q. Did he say how that would solve his problem?

A. She couldn't testify against him.

Q. After this trip to North Jersey with Rick, did you continue to have contacts and conversations with Rick up until the time that he left the area?

A. Yes.

Q. During any of those conversations, did Rick discuss the charges that had been brought against him by Gloria?

A. Well, the charges weren't mentioned necessarily. He just knew he was going to jail and he had also mentioned his frustration of Gloria might be having a relationship with

somebody else.
Q. Was there any more talk about killing Gloria?
A. All the time.
Q. What do you mean all the time?
A. Usually in every conversation.
Q. What would he say?
A. He would think of ways of how he could do it and what he was going to do with himself afterwards, murder himself. Committing suicide afterwards.
Q. What sorts of things was he talking about in saying various ways that he could do it?
A. Well, specifically his thoughts were of shooting her. I think that was the main way he was intending to do it.
Q. Did he specifically say that he was going to shoot her?
A. Mostly he said he was going to kill her. I wasn't really -- when you discuss things like that where someone says things like that to you, you try not to deal with it in a capacity of getting into it.
Q. I don't understand what you mean.

A. Well, it is not the kind of subject you would like to talk about.
Q. Okay.
A. At least I don't.
Q. When Rick would volunteer during each one of these conversations, as you have said, the idea of killing Gloria --
A. Huh-huh?
Q. -- what did you do?
A. I tried to talk him into other means of dealing with it, legal means. I also -- I knew he was intent on doing it.
Q. What is it that leads you to believe that he was intent on doing it?
A. Knowing Rick, his personality, his past performance of violence. I knew he was serious. He was a serious person. He wasn't a middle of the road type person. Or else -- in other words, when he is absolute in saying he's going to kill somebody, it's not the type of situation where you would say he's full of crap. You believe it. He's going to do it.
Q. Did you become aware during this period of time of an incident where the victim's home was vandalized, the door kicked

in?
A. Yes.
Q. How did you become aware of this incident?
A. He told me about it the day after.
Q. Who told you?
A. Rick told me.
Q. What did he say?
A. He kicked the door or tried to kick the door in and the police came to the area and he hid under a trash can or something.
Q. Did he say whose door he kicked in?
A. Gloria's.
Q. Did you continue to see Rick right up until the weekend before Gloria's death?
A. I did.
Q. Where were you living right before the time of Gloria's death?
A. I was -- I guess I was living in Lincoln Place.
Q. Okay. I want to focus your attention to the weekend before Gloria's death. This would be the weekend of April 23rd, 24th. What was going on in your apartment that weekend?

A. My apartment I was renovating. Some of Rick's men were working there. I walked in and Rick was sleeping on my bed and there was things that they wrote on the walls. I don't know who wrote them. I wasn't there. Specifically about -- he said this is my life, this debris is my life, and there was just strange comments written on my walls, the ones that were going to be covered with drywall.

Q. When you arrived at your apartment that day and, by the way, do you recall if it was Saturday or Sunday?

A. I think that was Saturday.

Q. Rick was sleeping in one of the bedrooms?

A. Yes. One bedroom.

Q. While you were there, did Rick awaken?

A. I woke him up.

Q. Okay?

A. I told him -- he was in such a bad mental state that I didn't really want him there at the time. Because he was at that point -- he had been saying when he was going to kill Gloria.

Q. There were occasions before this

weekend when Rick volunteered when he was going to kill Gloria?

A. No. It really became evident when he was going to do it, approximately at that time. And I had contact with the Atlantic City Police Department previous to that.

Q. Okay.

A. Stating -- telling them it was going to happen and they asked me to watch out, watch him.

Q. Was there any conversation involving Rick that day in your apartment?

A. Sure.

Q. Tell us what happened.

A. Rick was in a bad state of mind where he was saying to everyone at that time in the apartment that he was going to kill Gloria and he made everyone aware that he was -- it was going to happen soon.

Q. How did he make everyone aware that it was going to happen soon?

A. Because he just -- I think it was his state of mind -- his state of mind was that -- he was like a bomb ready to go off.

Q. What was it about him that causes you

to say that?
A. He was at the point where he couldn't return to normalcy and he was just ready to explode. His emotions -- or that he was ready to explode and do something about it soon.
Q. Did he say anything in words --
A. He said he was going to do it Sunday or Monday.
Q. Okay. Did he say or do anything that would lead you to understand how he was going to kill her?
A. Not really. I mean, he was -- he had a collection of guns, he would always say, so he was going to use it if that's what you mean.
Q. Did he say he intended to shoot her?
A. Yeah.
Q. Did Rick remain in your apartment that weekend?
A. No. I got him out of there. I didn't really want him around there. His state of mind was not one of niceness. So I took him to a -- one of the hotels on Tennessee Avenue and gave him some money to check himself in.
Q. How did you learn of the death of

Gloria Simonelli?

A. Tim Mooney called me early Tuesday morning and told me that --

MR. DAVIS: I object to what was said.

THE COURT: Sustained.

BY MR. TALASNIK:

Q. Who is Tim Mooney?

A. An officer with the Atlantic City Police Department.

Q. Now, sometime later, did you learn of Rick's arrest?

A. Yes, I did.

Q. And his return to New Jersey?

A. Yes.

Q. Sometime after learning of his arrest and return to New Jersey, did you have any contact with Rick?

A. He called me from jail.

Q. Did you have a conversation with him on the phone?

A. I did.

Q. Did any of the conversation involve the death of Gloria Simonelli?

A. Yes, it did.

Q. What did he say?
A. He told me -- he described how he killed her, that he did it -- he described how he did it as far as her walking out with a gentleman out of the Greenhouse and that he wanted to speak to her and she said no and he pulled out a gun and shot her and she went down to the ground and she said, oh, my God, I don't believe this is happening, and he told me he shot her again in the chest.
Q. He shot again?
A. And he showed no remorse.
Q. Did he discuss anything of the fellow who walked out of the bar with her?
A. I believe he said as he was running away, he had another -- took another shot at him. Missed, but took another shot of the fellow as he was running towards the car that was waiting for him.
Q. This is information that Rick gave you over the phone after his arrest?
A. Yeah.
Q. Did you discuss with him whether he felt any remorse for the shooting?
A. Well, his statement was that he had no

remorse, he was glad that it was over.

Q. Was there any further discussion between you and Rick regarding how he would defend himself on the charge of shooting Gloria Simonelli?

A. Well, there's conflicting conversations from Rick --

Q. Tell us --

A. -- at certain times.

Q. There was more than one?

A. There was more than one. He would call me from jail and he would sometimes say that he didn't do it and then there were other times where he said he did do it and I believe he probably -- I guess he felt that he could beat it --

MR. DAVIS: Objection.

THE COURT: Sustained.

MR. TALASNIK: Okay. We can't ask you for opinions.

THE WITNESS: Okay.

THE COURT: The question was what he said.

THE WITNESS: He would tell me that he didn't do it. After that he would tell me

he didn't do it and there were other times he said he would beat it on mental incompentency.

BY MR. TALASNIK:

Q. Which version was it that you gave us in court in terms of these various phone calls? The version that you gave us in court today where he described the killing and shooting the fellow and missing, during which phone call did he give you that version?

A. Right after he got arrested.

MR. TALASNIK: Thank you, your Honor, I have no further questions.

THE COURT: Mr. Davis?

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Brooks, you just indicated to the prosecutor that Mr. Highlander gave you more than one version of what happened?

A. Yes.

Q. On the date of the alleged killing?

A. Yes.

Q. And do you know for a fact which version is true?

A. I'm not a juror.

Q. I know you're not a juror.
A. And I wasn't there.
Q. And you weren't a witness, were you?
A. I wasn't a witness.
Q. So the only thing you indicated to Mr. Talasnik was what was told to you by Mr. Highlander?
A. That's correct.
Q. Whatever is true or was not true you don't know?
A. That's correct.
Q. Now, how long had you actually known Mr. Highlander prior to this incident?
A. Since about 1980.
Q. Since about 1980?
A. Approximately.
Q. And do you know when he mentioned he started to date Gloria?
A. I don't keep a record. It wasn't my personal business, but maybe it was September or October of 1987.
Q. Say between September of '87 through February of '87, how often would you say --
THE COURT: Excuse me. Ask that question again. I think you misspoke about

the date.' You said February of '87.

MR. DAVIS: I'm sorry, Judge, thank you.

BY MR. DAVIS:

Q. From around September of '87 until February of '88, how often would you say you would see Mr. Highlander?

A. I didn't see him I don't think more than once. Maybe twice.

Q. So once or twice.

And during the period of time that you indicated to the prosecutor that you saw him, when was that? What month was that? When was that that you had these conversations with Mr. Highlander concerning Gloria?

A. After she was --

Q. Pardon me?

A. After they broke up.

Q. When did they break up?

A. Well, according to Mr. Talasnik, it was in mid-March, end of March.

Q. Okay. Why did you characterize that answer according to Mr. Talasnik mid-March?

A. Because my memory on the time is not as maybe efficient as the records of the

court.
Q. And who refreshed your recollection with regard to the time.
A. Well, it was just mentioned to me just now -- I could give you an approximate time, but I couldn't give you an exact time, exact date.
Q. How did you know that Rich broke up with Gloria?
A. He told me.
Q. He told you?
A. Huh-huh.
Q. Did you notice anything about nim at that point?
A. He had a broken ankle or something.
Q. Mr. Highlander had a broken ankle?
A. Yes.
Q. Now, did you discuss Gloria with Mr. Highlander?
A. I did.
Q. Did he indicate to you his feelings with regard to Ms. Simonelli?
A. He did.
Q. And what was his feelings?
A. Well, as I stated before, that he had

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

- - - - - - - - - - - -

STATE OF NEW JERSEY :

VS. : TRANSCRIPT OF

RICHARD HIGHLANDER : TRIAL

Defendant :

- - - - - - - - - - - -

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

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

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

Q. What was his feeling for Gloria?

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

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

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

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

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

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

A. Yes.

Q. Do you recall telling Jim Versalla the

feelings that Rick Highlander had for Gloria Simonelli?
A. Yes.
Q. Do you recall using the words love and using the words obsessed?
A. He was obsessed.
Q. Did you use the word love?
A. I don't know if I used that word. It might be loosely, whatever.
Q. Whatever. You used them, didn't you?
A. I might have. I just don't recall.
Q. The time that you were talking to Mr. Versalla, you indicated Mr. Highlander was obsessed with Gloria Simonelli?
A. That's correct, I did.
Q. What do you mean when you say he was obsessed?
A. Obsessed does not necessarily mean love.
Q. I didn't ask you what it necessarily meant. What do you mean?
A. A compulsive act and a person will do compulsive things.
Q. That he was compulsive with Gloria in his life?

A. That is a fact.
Q. And he would ride around looking for her car so much?
A. Yes.
Q. And he was obsessed with the fact that someone else may have been going out with Gloria?
A. He was also obsessed with the fact that he might --
MR. DAVIS: Judge, could you direct --
THE COURT: Wait a minute.
MR. DAVIS: Could you direct him to answer the question?
THE COURT: Have the question read back and just answer the question he asked.
A. That's true.
Q. You also indicated he was jealous?
A. Yes.
Q. He was concerned about someone else going out with Gloria?
A. That's correct.
Q. And you -- why would you -- let me ask this question.
Why would you ride around with him

looking for Gloria's car?
A. Well, No. 1, I was asked to by Tim Mooney to keep an eye on him.
Q. Who is Tim Mooney?
A. A detective with the Atlantic City Police Department.
Q. So you were riding around on behalf of Tim Mooney, a police officer, with regard to --
A. Essentially, that's true.
Q. What were you? An informant for the police or not? At that time, were you an informant for the police?
A. At times.
Q. Were you a paid informant?
A. No.
MR. TALASNIK: I will object to any further pursuit on this line of questioning.
THE COURT: Wait until I hear the next question, Mr. Talasnik.
BY MR. DAVIS:
Q. Were you a paid informant?
A. No.
THE COURT: He already answered the question.

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

THE COURT: The answer was no.

BY MR. DAVIS:

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

MR. TALASNIK: Objection.

THE COURT: Sustained.

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

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

BY MR. DAVIS:

Q. How long had you known Tim Mooney?

A. Since about 1979.

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

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

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

A. When are you talking about?

Q. Pardon me?

A. When are you talking about?

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

A. That's correct.

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

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

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

A. Was I giving information?

Q. Yes.

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

Q. You gave what?

A. I spoke to them about Richard Highlander, about his state of mind.
Q. Didn't you also give them information about activities you thought Mr. Highlander was involved in?
A. Not that I recall.
Q. Not that you recall.
In fact, when you went on this trip to Paramus with Mr. Highlander, didn't you stop that very evening and make a call to certain police officials?
A. Not that I recall.
Q. What was the purpose of going to Paramus?
A. Richard had to collect money from someone he had done some work for.
Q. Why did you go?
A. He paid me.
Q. Paid you to do what?
A. To drive him there.
Q. How much did he --
A. He couldn't drive there.
Q. Why couldn't he drive?
A. Because -- either it was his broken leg or his not having a car.

Q. And he paid you how much?
A. I believe it was maybe $500. I wouldn't turn it down.
Q. You wouldn't turn $500 to drive him from Atlantic City to Paramus and back, would you?
A. I'd be crazy.
Q. Is that all you were paid for?
A. Yes.
Q. Now, during this period of time that you -- around, after or subsequent to March 16, directing your attention to Mr. Highlander's drinking, was it worse than usual?
A. That's hard to say because he was always a heavy drinker.
Q. I will direct your attention again to the statement that you gave to Mr. Versalli. Isn't it a fact you indicated to Mr. Versalli during this period of time, even though he may have been a heavy drinker, that it was much worse?
A. If that's what I said, then it's true.
Q. It is true, isn't it?
A. Yes.

Q. It was much worse during this period of time after Gloria left him?
A. He was under a lot of pressure.
Q. And you assessed his drinking to the effect that Gloria had upon him, didn't you?
A. I think I assessed it, if I'm not mistaken, to two different situations.
Q. Assessed it to Gloria?
A. Relative to Gloria.
Q. Yes. Now, you also indicated, Mr. Brooks, that during this period of time you were having emotional problems?
A. That's true.
Q. And isn't it a fact that your emotional problems affected your perception of this situation?
A. No. They had to do with my perception of a relationship. My own relationship.
Q. Now, this job that you indicated that was being done at 111 Lincoln Place, did you say?
A. Yes.
Q. Who was that job being done by?
A. Some men that work for Rick.
Q. Those men didn't actually work for

Rick. Those men may have been recommended by Rick?

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

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

A. I paid them.

Q. Did you pay Rick Highlander?

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

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

A. That's correct.

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

A. No.

Q. In fact, you were in and out?

A. Yes.

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

A. Reses?

Q. Reses.

A. I might have been with Sam at different times, that's true.
Q. And you would walk in and out of that apartment --
A. I wasn't with Sam all the time.
Q. And you weren't in that apartment all the time?
A. That's correct.
Q. In fact, you don't know when Highlander came to the apartment, do you?
A. No, I don't.
Q. In fact, when you arrived at the apartment, Highlander was sleeping.
A. That's true.
Q. And these men that you indicated Rick, Stewart, et cetera, they were out there doing the work and drinking.
A. I didn't see any liquor.
Q. What about beer?
A. I didn't see any. I'm not aware of that anyhow. It wasn't -- if they were drinking, it wasn't a lot.
Q. And you yourself were drinking?
A. No. I wasn't drinking. I had quit drinking by then.

Q. And these men that you were there with were putting certain writings on the walls, weren't they?
A. I don't know who put that writing on the wall. I wasn't there for that either.
Q. They weren't there when you left the apartment, were they?
A. No. It was Rick.
Q. I said the writings on the walls weren't there when you left the apartment?
A. That's correct.
Q. And when you came back to the apartment, these writings were on the wall?
A. That's correct.
Q. Where was Mr. Highlander when you walked in?
A. Sleeping in my bed.
Q. Sleeping in your bed. Did you wake him?
A. I woke him.
Q. Why did you wake him?
A. I didn't invite him into my bed and I didn't think it was -- when I heard the story that he was not in a good state of mind at that time from these fellows in my apartment,

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

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

A. That's a fair statement.

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

A. I think this was Saturday.

Q. What date?

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

Q. Of April?

A. Of April.

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

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

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

A. Yes.

Q. Where would you see him?
A. Well, one time I met him at Steamers.
Q. Where?
A. Steamers. It's a local restaurant and bar in Somers Point.
Q. Okay. What were you doing or what was he doing in Steamers?
THE COURT: Mr. Davis, I will interrupt at that point and we will take a recess and pick it up after lunch.
Ladies and gentlemen, we will recess now for lunch. Again, please remember not to have any discussions about anything having to do with the case during your luncheon recess and we will see you back at 1:30.
(Whereupon, the jury leaves the courtroom).
THE COURT: All right. Mr. Brooks, you may step down. During the course of the luncheon recess, please be sure you don't discuss the substance of your testimony without the Court's permission.
Counsel, anything you need from me?
MR. DAVIS: No, Judge.
THE COURT: Mr. Talasnik?

MR. TALASNIK: No, thank you, your Honor.

In recess.

(Whereupon, a luncheon recess was taken)

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

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

MR. TALASNIK: Yes, your Honor.

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

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

Mr. Brooks, you may be seated.

Anything else?

All right, jury in.

(Jury enters the courtroom)

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

Mr. Davis, you may proceed.

MR. DAVIS: All right.

BY MR. DAVIS:

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

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

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

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

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

A. That's a fair statement.

Q. Basically he was on the street?

A. That's true.

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

A. I'm sorry?

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

A. Absolutely.

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

A. Yes.

Q. Do you remember the basis you gave him for that answer? Or the answers you gave him?
A. Yes.
Q. Do you recall what you told him?
A. Yes.
Q. What did you indicate?
A. That there was basically two reasons. No. 1 --
Q. I'm sorry, I didn't mean to cut you off.
A. No. 1, that he was scared of the consequences of his indictment and, No. 2, of his frustrations and obsessiveness about his relationship or breaking up with Gloria.
Q. So it wasn't just the fact that he didn't want Gloria to testify against him.
A. No, not that he had told me.
Q. Okay. You also characterized Mr. Highlander as not having a full deck at this time.
A. That's correct.
Q. When I say at this time, I mean subsequent to March 16th, 1988.
A. That's correct.
Q. When you indicated he didn't have a

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

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

Q. Wasn't --

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

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

A. Yes.

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

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

Q. Pardon?

A. He was going to be scoffed away.

Q. And he thought he was going to be scoffed away because of the way Gloria had treated me?
A. I can't make that statement.
MR. DAVIS: That's all, your Honor.
THE COURT: Mr. Talasnik?
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. You were asked, Mr. Brooks, with respect to your knowledge of Rick's drinking habits even before the breakup with Gloria, do you recall that?
A. Yes.
Q. And do you recall that that was one of the areas that was covered with the investigator who spoke with you, Mr. Versalli?
A. That's correct.
Q. I want to ask you if you recall the following questions and answers from that and in that subject matter.
"QUESTION: What was his drinking or drug behavior after the breakup?
"ANSWER: I don't know what his drug behavior was. His drinking behavior was

always abusive.

"QUESTION: How so?

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

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

"ANSWER: I think so."

Do you recall that?

A. Yes.

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

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

THE COURT: On recross you can.

MR. DAVIS: Okay.

THE COURT: You may proceed.

BY MR. TALASNIK:

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

A. Yes.

Q. And you attempted to explain or you

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

A. Vaguely.

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

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

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

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

Do you recall that exchange?

A. That's correct.

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

picked up after he separated from Gloria, do you recall that?
A. Yes.
Q. Now, not withstanding the drinking or without regard or given that the drinking took place, was Rich nonetheless able to get by?
A. He's a survivor.
Q. Was he able to work during those weeks?
A. I really don't recall truthfully. I know he had money coming in.
Q. Okay.
A. Obviously he had a company and his men were working at these jobs.
Q. All right. So you were aware, therefore, that he was able to carry on some semblance of his business?
A. That's correct.
Q. And even though he was drinking, was he nonetheless able to communicate with you when he was in your company?
A. Yes.
Q. He was able to express himself in an understandable way?
A. Absolutely.

Q. Was he able to indicate among other things his intent to kill Gloria?
A. Yes.
Q. With respect to any emotional problems that you may have had at or about this same time, did they in any way interfere with your ability to appreciate what Mr. Highlander was saying to you about his concerns?
A. Not at all.
Q. Did they in any way interfere with your ability to remember Richard's statements to you that he intended to kill Gloria?
A. I remember vividly.
Q. Did they interfere with your memory of his statements of not being willing to go to jail over the charges that she brought?
A. Nothing interfered.
Q. Now, you indicated to Mr. Davis that as far as you knew, Richard did not have a regular place to stay between the time that he broke up with Gloria and the time of her death?
A. That's correct.
Q. Do you know an individual by the name of Michael Reed?

A. I do.
Q. Do you know whether Richard ever stayed on and off with Michael Reed during this period of time?
A. He did.
MR. TALASNIK: Thank you, no further questions.
THE COURT: Mr. Davis.
MR. DAVIS: I have no questions, your Honor.
THE COURT: You may step down, Mr. Brooks. Thank you very much for coming.
(Witness excused).
THE COURT: Call your next witness.
MR. TALASNIK: The State would call Detective Tim Mooney.
TIMOTHY MOONEY, having been duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. TALASNIK:
Q. Would you tell us where you're currently employed?
A. Detective Atlantic City Police Department, vice section.
Q. How long have you been employed with

the Atlantic City Police Department?
A. I'm in my 12th year.
Q. How long have you been employed as a detective in the vice unit as you've described it?
A. Approximately seven years.
Q. Detective Mooney, do you know an individual by the name of Richard Highlander?
A. Yes, sir, I do.
Q. Is the individual that you know as Richard Highlander in the courtroom today?
A. Yes, sir.
Q. Would you point him out, please?
A. He's seated between counsel in the red shirt with stripes.
THE COURT: Pointing to and indicating the defendant.
BY MR. TALASNIK:
Q. How long have you known Mr. Highlander?
A. I believe my first encounter with Mr. Highlander was approximately 1985.
Q. Between 1985 and the spring of 1988, did you have occasion to have contact with Mr. Highlander?

A. Yes, sir.
Q. I'd like to correct your attention to a period of time between mid March 1988 and late April 1988 and ask whether you had any contact with Mr. Highlander during that six to seven week period.
A. Yes, sir, I did.
Q. What was the nature of the contacts that you had with Mr. Highlander during the second half of March 1988?
A. It was after an arrest that occurred in Margate in relation to a domestic dispute with list girlfriend.
Q. What kind of contacts did you have with him for the weeks that followed that incident?
A. It was mostly by telephone. I believe it was alibi telephone at that point.
Q. How frequently would you speak with Mr. Highlander by phone during say those first three weeks after this incident?
A. I would say about once every 10 days maybe. Give or take a few days either side.
Q. During those conversations, what would Mr. Highlander talk to you about?

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

Q. That what may affect his status?

A. The pending charges, the assault charges.

Q. What pending charges?

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

THE COURT: May I see counsel?

(The following occured at side bar)

THE COURT: What parole status?

MR. TALASNIK: I've interviewed this witness. His recollection is the term parole. Correctly it is probation, but I didn't want to presume to correct him, but that's what he's referring.

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

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

charges on his girlfriend.
Q. Did you have any other discussion with him during these first few phone calls about those charges or about the former girlfriend?
A. Mr. Highlander was angry she was pursuing the charges against him at that time.
Q. Now, did you continue to have phone contact with him during the first half of April of 1988?
A. Yes, sir, I did.
Q. Did the frequency of these contacts change?
A. Yes. Once the status of the charges changed, he called about once a week at that point.
Q. And what is it that he said to you with respect to the change in the status of the charges?
A. Well, he believed that the prosecutor and Ms. Simonelli and her father were out to get him at that point because they were taking a simple assault type case and having it indicted in the grand jury as an aggravated assault.
Q. How did he indicate to you his

reaction to this change in the status of the charges?

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

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

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

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

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

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

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

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

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

Q. The 24th of April?
A. Yes.
Q. How do you recall that that was the date of the last contact that you had?
A. Two things. It was Sunday and I was home for dinner, which is one night I try to be home for dinner and the night -- the morning after the incident took place I knew exactly when he called. I made notes of that conversation.
Q. On this last phone call, on this Sunday, the 24th of April, what did Mr. Highlander talk about?
A. He was very despondent at this time. He was angry that Ms. Simonelli was doing this to him, he had given her jewelry, furs, car. He was angry at the Atlantic County prosecutor, felt they were also contributing to this. He was very despondent. He didn't want to go to jail. He made statements to the fact that this was the last time I was going to hear from him, things of that nature.
Q. Was this, in fact, the last time you would hear from him?
A. Yes, sir, personally.

Q. Do you know an individual by the name of Robert Brooks?
A. Yes, sir, I do.
Q. How long have you known Robert Brooks?
A. I met Mr. Brooks approximately 1978 while walking a beat. He was a store owner. More recently I would say I had frequent contacts with him in the past two years.
Q. Okay. Did you ever have any contact or conversations with Mr. Brooks during this same period of time that we are talking about regarding Mr. Highlander?
A. Yes, sir.
Q. As a result of those conversations that you had with Mr. Brooks, did you ask Mr. Brooks to do anything or give him any instructions?
A. Mr. Brooks had informed me --
MR. DAVIS: Objection.
THE COURT: The objection is sustained. As a result of your discussions with Mr. Brooks, did you ask him to do anything with respect to Highlander?
A. Yes, sir.
Q. What did you ask him to do?

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

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

A. Yes, sir, I did.

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

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

MR. DAVIS: I object to this.

BY MR. TALASNIK:

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

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

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

A. Very excited. I imagine he was just

notified of the incident.

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

THE COURT: Mr. Davis?

CROSS-EXAMINATION

BY MR. DAVIS:

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

A. I would say approximately 1985.

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

A. Roughly, yes, sir.

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

A. Yes, sir.

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

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

Q. And why was he angry about the simple

assault and what happened?
A. Generally because he was charged. He was injured also in the dispute.
Q. Now, you've indicated on direct examination to Mr. Talasnik that defendant was on parole.
A. Yes, sir.
Q. In fact, he wasn't on parole, was he?
A. I believe he was paroled. If it wasn't parole, it was probation.
Q. Do you know what he was on?
A. I believe it was parole, sir.
Q. And you base that on what?
A. Conversations with other officers and --

MR. DAVIS: May I approach?

THE COURT: Yes. You may.

(Whereupon, the following occurred at side bar).

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

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

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

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

MR. TALASNIK: I have no objection.

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

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

MR. DAVIS: Okay.

(Whereupon, side bar ended)

THE COURT: Time. Let me take just

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

Probation refers to a period that is

imposed by a court as a part of a sentence. A person is maze did on probation as a part of a Judge's sentence. While on probation, a person is under the jurisdiction of the court through the probation office, which works for the court and reports to the probation office through a probation officer and keeps the probation officer informed about what he is doing and the like. If a person is on probation and violates his probation by doing certain things, he can be brought back to court and if the Judge finds that the probation was, in fact, violated, the Judge has the power to revoke the probation and to do a number of things. Depending on what the violation of probation is for, the Judge could put him back on probation or could put him back on probation under certain terms and conditions or could revoke the probationary sentence all together and send the person to jail for whatever period of time he could have gone to jail for on that crime as a result of the original charge. Let's take a crime -- I will not give you a detailed crime but let's take a crime that carries up to five years in

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

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

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

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

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

Gentlemen, anything further?

MR. TALASNIK: No.

MR. DAVIS: No, your Honor.

One more question.

THE COURT: You may proceed.

BY MR. DAVIS:

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

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

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

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

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

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

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

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

(Witness excused).

THE COURT: Call you next witness.

MR. TALASNIK: Michael Reed.

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

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

Proceed.

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Reed, where do you live?

A. Atlantic City.

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

A. All my life.

Q. How old are you, Mr. Reed?

A. 33.

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

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

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

A. Yes.

Q. How long have you known Richard Highlander?

A. About 10 years.
Q. Is the fellow that you know as Richard Highlander in the courtroom today?
A. Yes.
Q. Can you identify him, please?
A. Yes. Right there.
THE COURT: Pointing to the defendant.
BY MR. TALASNIK:
Q. How did you come to know Mr. Highlander?
A. Years ago, I met him in a motel, in a lobby with a guy at the desk, and he offered me a ride and then I got to know him from there.
Q. During the course of the last several years, have you ever worked at job sites with Mr. Highlander?
A. Yes.
Q. And have you ever been in his company socially?
A. Yes.
Q. During the latter part of 1987 or early 1988, did you become aware of Mr. Highlander's involvement with a young girl

named Gloria Simonelli?
A. Yes.
Q. How did you learn of their relationship?
A. He told me he met a girl that was working at a casino and he was going to take her out.
Q. Do you know about when that would have been?
A. Maybe beginning of September.
Q. Of 1987?
A. Yeah.
Q. Did you ever go out with Rick and Gloria?
A. I went with them to purchase a car. That's all.
Q. Okay. Were there ever occasions when you were with Rick and Gloria in the condo that Gloria lived in?
A. Yes.
Q. When about would that have been?
A. February of '88 maybe.
Q. February of '88?
A. Around Christmas and January and February.

Q. Okay.
A. Around that time.
Q. Was it wintertime?
A. Yeah.
Q. How did the two of them act with each other?
A. So-so. I only heard them have one argument before.
Q. Tell me about the argument.
A. You know, language. He said, beat your ass or something and she says, yeah, well, you'll end up in jail if you ever do that.
Q. How did he respond?
A. Yeah, right or something like that.
Q. Okay.
A. Try it or yeah, right, sure.
Q. Okay.
Do you recall being in her presence at any other times?
A. He picked her up from work a few times and I was with him. We went to get the car, Toms River. She went to pick out a car. We stopped at her parents' house and had dinner, up around Toms River somewhere.

Q. Did you come to learn that Rick and Gloria broke up in the middle of March 1988?
A. Yes.
Q. How did you find out that the two of them had split?
A. He told me that she signed a complaint against him and that he was going to be in a lot of trouble because he had been in trouble -- on probation -- and that's when the beginning of the problem started.
Q. That's when the beginning of the problem started?
A. Yeah.
Q. Did you continue to see him from the time that he and Gloria split until the time of Gloria's death?
A. Yes.
Q. How often would you see Rick during that six-week period?
A. He stayed with me about three weeks, I guess, at my house.
Q. What do you mean he stayed with you at your house?
A. We let him stay at our house because he didn't have anywhere to stay at the time.

Q. Were you and he the only people staying in that house?
A. No. My aunt was also there.
Q. Was it her house?
A. Yeah.
Q. Now, during the time these three weeks or so that you remember Rick was living with you, did you have any conversations with Rick about Gloria?
A. Yes.
Q. What did he say about Gloria?
A. He said that he couldn't believe that she was putting him through all of this and he was going to go to jail for 20 years and he started talking about killing her.
Q. Was there ever any conversation about charges that Gloria had signed against him?
A. Yes.
Q. What did he say?
A. He said he was indicted, three count indictment. I believe it was terroristic threats, criminal restraint and assault.
Q. Okay. What else did he say about the charges?
A. He said that if there wasn't a

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

Q. He said that to you?

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

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

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

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

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

they say something.
Q. How often would you say during the weeks that Rick lived with you that Rick said he was going to kill Gloria?
A. I couldn't even tell you. 50 times maybe.
Q. Was there ever any discussion by Rick as to how he was going to kill Gloria during this period of time that he stayed with you?
A. He had a gun and he told me he was going to shoot her with it.
Q. How do you know that he had a gun?
A. He had the gun in my house.
Q. How do you know that he had the gun in your house?
A. Because he asked me where he could put it so my aunt wouldn't see it and nobody would find it and I said we can hide it down in the cellar.
Q. Did he ever show you the gun?
A. Yes.
Q. Where were you when he showed you the gun?
A. First time I saw the gun, it was in a briefcase and he had just obtained it, so he

said. And it was at the Brown Derby Bar.
Q. Did you see the gun again?
A. Yes.
Q. Where?
A. At my house.
Q. Did he show you the gun?
A. Yes.
Q. Do you remember what it looked like?
A. Cylinder type, long barrell.
Q. Okay. Do you remember anything else about the gun?
A. Heavy.
Q. Heavy?
A. Yeah.
Q. Anything else about the handle or the grips or anything?
A. I think the handle was like -- like an old western type of looking -- not an automatic type. The kind with the revolver.
Q. A revolver?
A. Yeah.
Q. Do you remember anything else unusual about it?
A. No.
Q. Did he ever discuss with you doing

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

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

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

A. To kill Gloria.

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

A. Yes.

Q. What was that?

A. To kill Gloria.

Q. Did the gun remain in your residence continuously?

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

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

A. Yes.

Q. Did he take the gun with him?

A. To my knowledge, yes.
Q. Do you remember exactly when that would have been?
A. A couple of weeks into April. April 20th maybe.
Q. But at some point you asked him to leave?
A. Yes.
Q. And he took the gun with him?
A. Yes.
Q. Do you know a fellow by the name of Robert Brooks?
A. Yes, sir.
Q. Did you have occasion to do some work for Mr. Brooks during the weekend of the 23rd and 24th of April 1988?
A. Yes, sir.
Q. Where were you doing this work?
A. On I think Lincoln Place.
Q. What's located there?
A. A building, apartment building.
Q. What kind of work were you doing there that weekend for Mr. Brooks?
A. We were gutting out the apartment, ripping out the walls and cabinets and things.

We were supposed to remodel it.
Q. What part of the job would you yourself be doing?
A. Ripping out the walls, the cabinets that were in there, old cabinets he didn't want anymore.
Q. During the course of that weekend, Saturday and Sunday, doing work in Mr. Brooks' apartment, did you have occasion to see Rick Highlander?
A. Yes.
Q. Do you remember specifically whether it was Saturday or Sunday?
A. It was Sunday.
Q. Would it have been Sunday the 24th?
A. Yes.
Q. How did Rick seem when he came to the apartment that Sunday?
A. He seemed pretty out of it. Like he hadn't slept all night and he -- pretty bugged, pretty deranged, he just had it. He was joking about getting thrown out of my house and he said he even got thrown out of the inlet. He said -- kept going on about how his life was ruined and he was going to go to

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

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

A. I believe he took a nap.

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

A. Yes.

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

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

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

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

Q. What kind of picture?

A. Snapshot he had.

Q. Snapshot of what?

A. Gloria.

Q. Okay. And what else was he doing?

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

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

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

BY MR. TALASNIK:

Q. To whom did he do this?

A. To me.

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

A. I felt it. It was like this.

Q. Was there a noise involved with it?

A. Yeah.

Q. What kind of noise?

A. Pooh, pooh.

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

BY MR. TALASNIK:

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

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

Q. That he would get who?

A. Gloria.

Q. Did he say when?
A. I didn't hear him say when, no.
Q. Was Rick asked to leave?
A. I think he was, yes.
Q. Did he, in fact, leave that Sunday?
A. To my knowledge.
Q. Did you see Rick again after that?
A. No.
Q. How did you learn of the death of Gloria?
A. Jimmy Barber from the major crime squad called me about 6:20, 6:30 in the morning.
Q. And for what purpose?
A. Said he was looking for Rick.
Q. Now, as a result of that contact, you got interviewed by the police, didn't you?
A. Yes.
Q. When you talked to the police that first time, did you tell them that Rick had a gun?
A. No.
Q. Why not?
A. I was a little frightened because Rick told me if I told anybody about the gun or

about anything he said, that he would kill me.
Q. At that time, when you were first talked to by the police, was Rick in custody?
A. No.
Q. Did you later determine to share this information with the police?
A. Yes.
Q. And did you do so the next day?
A. Yes.
Q. Shortly after that, did you learn that Rich had, in fact, been arrested?
A. It was a couple of weeks later that he had gotten arrested.
Q. After his arrest and return to New Jersey, did you have any contact with him?
A. Yes. He called me at my home.
Q. Did you have a conversation with him when he called you at your home?
A. Yes.
Q. What was the conversation about?
A. He said that the FBI had gotten him in South Carolina and that he was working on the place, painting, and he said that they came up behind him and told him don't move and he told me that -- I asked him, what happened, and he

told me when she came out of the bar --

MR. DAVIS: I object, your Honor.

THE COURT: Side bar.

(Whereupon, the following side bar discussion took place)

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

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

MR. DAVIS: I withdraw it, then.

(Whereupon, the side bar discussion concluded)

BY MR. TALASNIK:

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

A. Richard Highlander was talking to me.

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

A. Yes.

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

A. Yes.

Q. All right. Would you then go on and tell us what else Richard Highlander told you during that phone call.
A. He said that he went to the Greenhouse and that Gloria came out of the bar.
Q. Who came out?
A. Gloria Simonelli.
Q. Okay.
A. And that he was between two cars and he came up and when she saw him, she said, oh, no, and he said oh, yeah. And he shot her and then he said he went up on top of her and shot her.
Q. Shot her again?
A. Yes.
Q. Okay.
A. Then he told me he shot at the guy, but he missed him.
Q. All of this was information given to you by Mr. Highlander over the phone?
A. Yes.
Q. Did you ask him any questions after he gave you that version of the facts?
A. Just, you know, couldn't believe it. It's hard to believe it happened. I still

don't believe it, you know.
Q. What was his demeanor like on the phone as he's describing for you the shooting of Gloria and the shooting at but missing her male companion?
A. Jokingly sometimes. He joked about there was something in the paper once about the mobster Leonetti driving around a parking lot or something and he said I was just like Phil, hid in the parking lot.
MR. TALASNIK: Thank you, no further questions, your Honor.
THE COURT: Cross-examine?
CROSS-EXAMINATION
BY MR. DAVIS:
Q. Mr. Reed, you don't like Richard Highlander, do you?
A. I feel sorry for him.
Q. The question is, you don't like Richard Highlander?
A. I have no contempt against him, if that's what you mean.
Q. You signed complaints against him?
A. At one point, yes.
Q. How long have you known him?

A. About 10 years.
Q. And during that 10-year period, he's done a lot for you?
A. Off and on. I did a lot for him.
Q. Now, directing your attention to after March 16th of 1988, you originally were questioned by the prosecutor's office about a gun.
A. Yes.
Q. And when you were questioned about a gun, you were put under oath before you gave your answers, didn't you?
A. Yes.
Q. And you swore at that time that you were going to tell the truth to the prosecutor's office?
A. Yeah.
Q. And when they questioned you about whether or not Richard Highlander had a gun, what was your answer?
A. No.
Q. You told them he didn't have a gun?
A. No.
Q. And then you come back later and you say you told them that he did have a gun?

A. Yes.
Q. That you knew he had a gun.
A. Yes.
Q. Were you under oath when you said that?
A. Yes.
Q. In fact, you weren't under oath the second time, were you?
A. To my knowledge, I was.
Q. And you want us and you are indicating today to us that the true story is you knew he had a gun?
A. Yes.
Q. In fact, Mr. Brooks, what type of gun --
THE COURT: Mr. Reed.
MR. DAVIS: I'm sorry.
BY MR. DAVIS:
Q. Mr. Reed, what type of gun is this that you are talking about?
A. It looked to me like a big gun. He said it was a 357.
Q. You know what kind of gun it was, don't you?
A. No, I don't.

Q. In fact, you carried this gun up and down the streets, didn't you?
A. No, sir, not that I remember.
Q. In fact, you were concerned when this homicide happened because you thought fingerprints might be on the gun, didn't you?
A. I did. I touched the gun in my house.
Q. You know a man by the name of Butch Kozar?
A. Yes.
Q. Where does Butch Kozar lived?
A. At the time he lived a block from me.
Q. Do you recall going to Butch Kozar's house one evening a few days before this alleged homicide?
A. Yes.
Q. Do you recall going into his home with the 357 Magnum tucked into your belt?
A. I don't know if it was tucked into my --
Q. Tucked in your belt.
A. I was drunk that night.
Q. Do you recall taking this 357 Magnum and asking him to buy it from you?
A. I remember Rick asking him to buy it

for some cocaine.
Q. You wanted the did cocaine and you gave Butch Kozar the gun to look at?
A. No. It wasn't mine to give. It wasn't mind to give or to trade.
Q. Do you remember showing him your arm and telling him to look at your arm and see what name would appear on the arm?
A. No.
Q. You don't remember telling Butch that Satin would appear on your arm?
A. No.
Q. And that you would like him to buy this gun so you can go get some coke?
A. No, I don't remember that.
Q. And Butch Kozar said no?
A. I don't remember that, sir.
Q. Is Butch Kozar a friend of yours or is Butch Kozar a friend of Richard Highlander?
A. I thought he was a friend of both of us.
Q. Do you recall being in the Silver Dollar one night with that gun?
A. I remember being out with Rick one night. Many nights.

Q. Do you remember being out with the gun?
A. No.
Q. You don't remember that?
A. I don't remember the gun until we get to Butch's house.
Q. Why? Do you remember nothing before that night?
A. I was drinking.
Q. Were you drinking during the time that you've given this testimony to Mr. Talasnik? Was your mind clear every time you observed those acts?
A. Most of it, yes.
Q. Most of it?
A. Yes.
Q. How long did Rick stay in your house?
A. I would say a little over three weeks.
Q. Why was he put out? Or was he put out?
A. Because he came in drunk to my house. He paid no rent, ran the phone bill up. My aunt, it was her house and she said she had enough and she wanted him to leave.
Q. Do you remember what you initially

told the police why he was put out?
A. Because he got drunk.
Q. Wasn't your initial statement, he was put out because he had a weapon?
A. No.
Q. That wasn't your original statement?
A. No.
Q. Did you later change it --
A. I wanted him out because of the weapon, because I wasn't sure what he was liable to do when he was drinking.
Q. Now, directing your attention to the day that you were working at 111 Lincoln Place, who were you working for?
A. Bobbie Brooks.
Q. Whose job was it?
A. My job.
Q. Your job. It wasn't Rick Highlander's job?
A. He got me the job through Bobbie.
Q. But it was your job?
A. Yes. He said he didn't want to be bothered with it.
Q. Was there drinking going on that day?
THE COURT: Are you talking about

Sunday?

MR. DAVIS: Yes, Judge.

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

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

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

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

A. No.

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

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

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

A. Yeah.

Q. Yeah, what?

A. I remember.

Q. They were put there?

A. Yes.

Q. By you?

A. By me and the other workers.

Q. When Rick came into the apartment that day, what condition was he in?
A. Pretty wacked up, pretty wiped up.
Q. When you say pretty wiped up or wacked up, what do you mean?
A. Looked like he hadn't slept all night, unshaven, said he had a rough night and said he hadn't slept. Said his life was ruined.
Q. Did he indicate why his life had been ruined?
A. Yes.
Q. Why?
A. Because he was going to go to jail for 20 years.
Q. Did he ever indicate to you how he felt about Gloria?
A. Pardon me, sir?
Q. Did he ever indicate to you how he felt about Gloria?
THE COURT: Are you talking about that day?
MR. DAVIS: Yes.
A. That he wanted to get her because she was putting him through all this.
Q. Did he ever indicate his feelings,

emotional feelings toward Gloria?
A. Yes.
Q. What did he indicate?
A. He said he couldn't believe that all the things he did for her, that she would turn around and do this to him.
Q. Are you familiar with the things he had done for her?
A. So he said, yes.
Q. I said, were you familiar with the things he had done?
A. Just the car.
Q. What about the car?
A. That he said he bought her the car.
Q. Well, were you there when he bought her the car?
A. I wasn't there when -- I didn't see him pay for the car. That's what I'm saying. I don't know who actually paid for the car.
Q. But you drove to Toms River with Rick and Gloria?
A. Yeah.
Q. And were you there when he said he bought the car with Gloria?
A. Yes.

Q. And Gloria wasn't saying no, was she?
A. They were checking her credit references and not Mr. Highlander's. They were checking her job credentials and not his.
Q. They may have been checking it. She didn't deny the fact that Rick Highlander put up the money, did she?
A. I have no idea. That was his and her business. I didn't know who put the money up.
Q. The question is, when Mr. Highlander was telling you in her presence that he had purchased the car, she never denied it, did she?
A. Put that by me again.
Q. When Rick Highlander was telling you the day you rode up to the Toms River area that he had purchased the car for Gloria Simonelli, she didn't deny it, did she?
A. I don't really -- I can't really make comment on that because I really don't know who was going to be responsible for the financing of the car. I know he stated he would help her pay for it. But, like I said, when they were checking her, they were checking her credit with banks. I think they

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

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

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

Q. Of 1987?

A. '87.

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

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

Q. And what is the Ritz?

THE COURT: Excuse me. Where?

THE WITNESS: Ritz Condominium.

Q. Where is that?

A. Iowa and the Boardwalk.

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

A. Yes. He rented there.

Q. What type of business did Rick have at that time?
A. Window washing.
Q. Did he own the business?
A. Yeah.
Q. Now, during the course of the time from September of '87 up until approximately March 16 of 1988, did Rick maintain this business, to the best of your knowledge?
A. Yes.
Q. And periodically you would work for him?
A. Yes.
Q. Now, subsequent or after March 16th, 1988, did you notice anything about Rick's business?
A. He was doing pretty good as far as he had some -- he had a big job going and he was waiting for the payment on the business.
Q. Did he attend to business after that?
A. Did he attend to business?
Q. Did he attend to his business?
A. That I know of, he would. I mean, he kept it going with the jobs he had going, he tried to keep them going.

Q. Was he drinking excessively at that time?
A. He drank quite often, yes.
Q. And that's why you indicated he was put out by your aunt?
A. When he came in that night drunk, yes, sir.
Q. Now, during these times or these periods that you were talking to Rick about Gloria, isn't it a fair statement to say that most of the time that he was speaking to you that he was intoxicated or high on drugs?
A. He didn't -- he wasn't constantly always drunk, no.
Q. Well --
A. Not every day drunk.
Q. But the vast amount of time he was ingesting some type of alcohol or drug?
A. I would say a lot of the time, yes, sir.
Q. Now, during this 10-year period that you have known Rick, would you say that after March 16th he was using these or abusing these two items more than usual?
A. Yes.

Q. And during this period of time after March 16th, his conversation to you about Gloria took up much more time than he previously spoke to you in terms of Gloria?
A. Yes.
Q. In fact, after March 16th, could you say that most of his conversation revolved around Gloria?
A. I would say most of it.
Q. Now, in terms of him calling you from the jail, isn't it a fact that he called you from the jail concerning the whereabouts of Tyler Fitzgerald?
A. No. He told me that Tyler Fitzgerald came to visit him and brought him a Bible. I think maybe a pack of cigarettes, I'm not sure.
Q. And that he wanted you to get or give him the telephone number of Tyler Fitzgerald? Isn't that the purpose of the call?
A. No. Not that I remember.
Q. And he indicated he wished you to go to Tyler Fitzgerald and tell her that he put her on the visitor's list?
A. I believe something like that. If I

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

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

A. The 24th.

Q. Of April?

A. Yes.

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

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

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

A. Yes.

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

A. Yes.

Q. Is that true?

A. Right.

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

THE COURT: Mr. Talasnik?

MR. TALASNIK: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. TALASNIK:

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

A. Yes.

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

THE COURT: S-48.

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

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

BY MR. TALASNIK:

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

simply tell me whether you recognize what they are.

A. Yes, I do.

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

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

Q. And the date of the complaint?

A. October 7th, 1987.

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

A. Harassing and assaulting me.

Q. In October of 1987?

A. Yes.

Q. Looking at this second document --

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

Q. Indicating that Rick had done what to you?

A. Assaulted me and threatened to kill me.

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

A. Yes, I did.
Q. What happened to the charges?
A. They were dropped.
Q. By who?
A. By me. I didn't come into court.
Q. How come?
A. He had enough problems with this. It really didn't matter if I showed up. I don't think.
Q. So whatever feelings you had against Rick, they weren't enough to cause you to go to court to testify?
A. Yes.
Q. Even though the charges were harassing and assault and threatening to kill you.

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

Let's start with yourself; okay?
A. Yes.
Q. You don't deny that during the six weeks between when Rick broke up with Gloria and the last time that you saw him that you did some drinking?
A. No, I don't deny that.

Q. And you don't deny that you also did some illegal drugs then?
A. Yes.
Q. Was your level of intoxication such that you really don't remember Rick Highlander showing you a gun?
A. On some occasions it may have been, but not the initial -- not the first time.
Q. There were sober occasions when Rick showed you the gun?
A. Yes.
Q. And you're sure, therefore, that you actually saw it in his possession?
A. Yes.
Q. Were there sober occasions when Rick Highlander told you about his concern over these charges Gloria had brought?
A. Yes.
Q. And were there sober moments when you remember him saying that he would kill Gloria?
A. Yes.
Q. Referring to the day that you were working in Mr. Brooks' apartment, the last time you saw Rick, were you sober and straight that day?

A. Yes.
Q. So there was nothing to affect your memory about Rick saying that his life was debris?
A. No.
Q. And there is nothing affecting your memory about Rick saying that he was going to do it, he was going to take care of her?
A. No.
Q. And there is nothing that affects your memory of the fingers being placed behind your ear and the noise of a gun being made by Rick Highlander?
A. No.
Q. With respect to Mr. Highlander's use of drugs and/or alcohol, you don't deny that he used them sometimes, do you?
A. No, I don't.
Q. And there were times when he used them to excess during this six-week period, isn't that so?
MR. DAVIS: I object, leading.
THE COURT: Leading.
BY MR. TALASNIK:
Q. Were there times when he used them to

excess during that six-week period?
A. Yes.
Q. Were there also times when he was straight and sober?
A. Yes.
Q. Were there times that he was able to function in his job?
A. Yes.
Q. Were there times he was able to get paid for his work and pay bills?
A. Yes.
Q. Were there times he was able to walk a straight line and talk?
A. Yes.
Q. During any of these times, did Mr. Highlander express to you his concern over the charges Gloria had brought?
A. Yes.
Q. During any of these sober and straight times, did he express to you his desire to kill Gloria?
A. Yes.
Q. During any of these sober and straight times, did he tell you that if she was gone and couldn't testify against him, he would not

have to go to jail?
A. Yes.
MR. TALASNIK: No further questions.
THE COURT: Mr. Davis?
RECROSS-EXAMINATION
BY MR. DAVIS:
Q. Mr. Reed, that document which the prosecutor just showed to you, the complaint, that wasn't the only time you attempted to make complaints against Rick Highlander, is it?
A. What other time are you talking about, sir?
Q. Well, didn't you tell the police about tax evasion?
A. No, I didn't.
Q. Didn't you tell the police about drugs?
A. I told the police that I called -- I called a policeman once and said I thought he was go to kill me, at the time of the first complaint. At the time, the threat seemed very real to me.
Q. The question is, Mr. Reed, with regard to Mr. Highlander, is it not a fact that you

told police officers stories about Mr. Highlander evading taxes?
A. No.
Q. Attempting to get him indicted?
A. No, I didn't.
Q. Isn't it a fact you told police officers about the use of drugs attempting to get Mr. Highlander indicted again?
A. Not that I remember. I didn't say anything about drugs or taxs.
Q. Are you saying you don't remember?
A. I don't remember.
Q. Or are you saying you didn't do it?
A. I remember telling them I was scared he was going to kill me.
Q. The question is, do you remember telling them about him evading taxes?
A. No.
Q. You don't remember or you didn't do it?
A. I didn't, no.
Q. You didn't do it?
A. No.
Q. You didn't tell them about drugs?
A. No.

Q. Do you remember calling his probation officer and attempting to have him violated?
A. I remember calling his probation officer and telling him that he assaulted me and I was scared of him.
Q. Attempting to have his probation violated?
A. If so.
Q. Pardon me?
A. If that would have been the case, I guess.
Q. Have you ever been convicted of a crime?
A. When I was 18, yes.
Q. What crime were you convicted of?
A. Marijuana.
Q. You were convicted of --
A. Possession of and distribution.
Q. Say that again?
A. But that's expunged now, that case. That charge was expunged.
Q. What were you convicted of?
A. Of distribution and possession.
Q. Distribution of drugs?
A. Of marijuana.

Q. And possession of drugs to wit, marijuana?
A. Yes.
MR. DAVIS: That's all I have, your Honor.
THE COURT: Mr. Talasnik? Anything further?
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Any contact you had with Mr. Highlander's probation officer, that was limited to this incident that you've identified these documents where Mr. Highlander assaulted you and threatened you?
A. Yes, sir.
Q. Was this incident true?
A. Yes.
MR. TALASNIK: Nothing further, your Honor.
THE COURT: Mr. Davis?
MR. DAVIS: No questions, Judge.
THE COURT: You may step down, Mr. Reed, thank you very much.
(Witness excused).
THE COURT: Ladies and gentlemen, we

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

(Whereupon, the jury leaves the courtroom)

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

What's next, Mr. Talasnik?

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

THE COURT: One other witness here today?

MR. TALASNIK: Yes, your Honor.

THE COURT: Will it take us more

than an hour and a half?

MR. TALASNIK: No.

THE COURT: Who is the witness?

MR. TALASNIK: Richard Stewart.

THE COURT: That's all you have?

MR. TALASNIK: Yes, your Honor.

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

We will take a brief recess.

(Brief recess)

THE COURT: Mr. Talasnik?

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

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

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

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

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

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

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

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

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

MR. TALASNIK: Yes.

THE COURT: And you represented he

has not been charged.

MR. TALASNIK: Yes.

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

MR. TALASNIK: Yes.

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

MR. TALASNIK: Yes.

THE COURT: Okay. Does he have an attorney?

MR. TALASNIK: No.

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

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

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

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

What is your recommendation?

MR. TALASNIK: Your Honor, the

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

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

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

presence of the jury -- '

THE COURT: That is my present intention.

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

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

You had something you wanted to ask?

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

year.

THE COURT: Mr. Davis?

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

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

MR. TALASNIK: Live with it.

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

THE COURT: Mr. Davis?

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

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

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

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

MR. DAVIS: No.

THE COURT: Who is that witness?

MR. DAVIS: Highlander.

THE COURT: Who?

MR. DAVIS: Highlander, Senior.

THE COURT: Richard Highlander, Senior?

MR. DAVIS: Yes.

THE COURT: Where does he live?

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

THE COURT: Greenville, South Carolina?

MR. DAVIS: Greenville, South Carolina.

THE COURT: Okay.

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

THE COURT: Who?

MR. DAVIS: Sherman.

THE COURT: Where does he live?

MR. DAVIS: West Virginia; Alderson West Virginia.

THE COURT: Okay. Anybody else?

MR. DAVIS: No.

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

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

THE COURT: I understand.

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

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

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

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

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

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

Highlander about this.

THE COURT: You do all of that.

Anything else?

MR. DAVIS: No.

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

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

THE COURT: After we get the witness done.

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

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

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

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

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

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

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

The other -- another option that

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

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

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

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

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

THE COURT: Anything further?

MR. PRESTON: I have nothing further, Judge.

THE COURT: You may be seated.

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

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

THE COURT: Yes.

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

THE COURT: No.

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

THE COURT: No.

(Jury enters the courtroom)

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

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

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

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

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

Mr. Talasnik, call your next witness.

MR. TALASNIK: The State would call Richard Stewart.

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

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Stewart, how old are you?

A. 21.

Q. Where do you live?

A. Ventnor.

Q. Do you know a fellow by the name of

Robert Brooks?
A. Yes.
Q. Did you ever do any work at his apartment?
A. For a few hours, yes.
Q. I would like to direct your attention to Sunday, April 24th, 1988, and ask whether you were working at Mr. Brooks' apartment on that day.
A. Yes.
Q. How had you been hired to do that work?
A. Through Michael Reed.
Q. And what kind of work were you hired to do?
A. Drywall, painting, that sort of thing.
Q. What kind of project was this that you were working on?
A. Three bedrooms.
Q. What is it that was being done there?
A. We were tearing out mouldings, windows, fancy mouldings on the walls.
Q. You said you were hired by Michael Reed?
A. Yes.

Q. Was Mr. Reed there as well?
A. Yes.
Q. What about Mr. Brooks? Was he there at any time?
A. Yes.
Q. Was he there constantly or --
A. No. Off and on. He was in and out.
Q. Okay. During the course of that day, did another fellow come in who would be later identified for you as Rick Highlander?
A. Yes.
Q. Do you see that fellow in the courtroom today?
A. Yes.
Q. Would you point him out, please?
A. Right there.
THE COURT: The witness points to the defendant.
BY MR. TALASNIK:
Q. Now, prior to, before that meeting, had you ever met Rick Highlander before?
A. No.
Q. So that was your first contact with him?
A. Yes.

Q. Do you remember what Rick Highlander did when he came into the apartment that day?
A. He went to the bathroom and then went to sleep.
Q. Do you recall whether he got up?
A. Yes.
Q. Were you there when he got up?
A. Yes.
Q. Were you in the room when he came into the area where you were working?
A. Yes.
Q. Was there any kind of conversation involving Mr. Highlander?
A. Among us?
Q. Well, did Mr. Highlander say or do anything in your presence?
A. Yes.
Q. Tell us what he did or said.
A. He came in, sat down, started flipping through his attache case, some receipts and papers, and reached in his wallet, pulled out a picture of the girl. He didn't give a name. Let's see --
Q. How was he acting while he was going through these papers and taking out a picture

of this girl?
A. He seemed all right. He was laughing kind of sinisterly.
Q. Okay. What was he saying while he was laughing kind of sinisterly, to use your word, while going through these papers?
A. He was talking bad about the girl and he said that he was going to kill her. He said she's been hanging out at Ventura's and he said he was going to lay for her. This time he was standing and he was behind Mike Reed and he just motioned like this.
THE COURT: Indicating with the right arm out and with the right hand.
A. Right hand.
Q. What was he doing with his hand out?
A. He was trying to tell us he was going to shoot her.
Q. Who was he pointing the hand at?
A. Michael Reed.
Q. Was he indicating an intent to shoot Michael Reed?
A. No.
Q. Who did he say he was going to shoot?
A. He didn't say the name. He was

talking about the girl.
Q. The girl?
A. The girl.
Q. Did he identify the girl in any other way?
A. No.
Q. Now, you told us he had taken some kind of picture out of his wallet?
A. Yes.
Q. What do you remember about that?
A. Not much.
Q. Just that it was a picture?
A. Yes, of the girl.
Q. How else did he talk about this girl that he was going to kill?
A. He said he bought her several things and she dumped him. That's about it, yeah.
Q. Was there any discussion about this being a prior girlfriend?
A. Yes.
Q. Was there any discussion about any charges involving him and her?
A. No.
Q. Just that she had dumped him after he spent money on her?

A. Yes.
Q. And he indicated an intent to kill her?
A. Yes.
MR. DAVIS: Objection.
THE COURT: Sustained. Stay away from leading questions.
BY MR. TALASNIK:
Q. Did he say when he intended to kill her?
A. No.
Q. Did he say where?
A. Yes.
Q. Tell us about that.
A. He said he was going to lay for her, he was going to wait for her to come out.
Q. And do what?
A. He didn't say what. He made the motion behind Michael Reed's head; in other words, that he was going to shoot her.
Q. Okay. At some point, was Rick asked to leave?
A. I don't know.
Q. Did he leave at some point?
A. Yes.

Q. And is that the last time you ever saw him face to face?
A. Yes.
Q. Now, at some later time, did you learn that Rick had been arrested and brought up to New Jersey?
A. Yes.
Q. Did you have any contacts with him after his return to New Jersey?
A. Yes.
Q. Was it face to face or in some other way?
A. By telephone, yes.
Q. I want you to tell us about the first telephone conversation that you had with Rick after his return to New Jersey and the first question I am going to ask you is whether you can tell us approximately when that conversation took place.
A. It was about mid-day, I don't know what day. I asked him what he was still doing alive. He said after he killed the girl, he was going to take a massive overdose and they would find him dead somewhere.
Q. Is this something he said in the

apartment?
A. Yes.
Q. Okay. So when he called you or you spoke with him, that's when you asked him what he was still doing alive?
A. Yes.
Q. During the course of that conversation, did you have any discussion with Rick about the death of the girl Gloria?
A. Not on the first conversation. Maybe the second or third.
Q. What all did you talk about during the first conversation?
A. I really can't remember everything.
Q. Why would he be calling you? Did he say why he was calling you --
A. Yes. I called him.
Q. You called him?
A. Yes.
Q. Why did you call him?
A. Stupidity, curiosity. I had some questions of my own to ask.
Q. What did you ask him?
A. I asked him did he kill her, I asked him if they found the gun, I asked him how he

got caught, that sort of thing.
Q. When you asked him did he kill her --
A. He said yes.
Q. He said yes?
A. Yes.
Q. Did you ask him or when you asked him whether they found the gun --
A. He said no.
Q. When you asked him how did they find you --
A. He didn't answer that. I don't know.
Q. Would there be later phone conversations between you and Rick?
A. Yes.
Q. Did any of these conversations also involve the circumstances surrounding the shooting?
A. Yes; somewhat, yes.
Q. What sorts of things did he tell you about the shooting?
A. He -- nothing like that. He just changed his story and said he didn't do it.
Q. On which conversation was it where Rick said, yes, he did shoot her?
A. I'd say around the second or third

conversation.
Q. Did he during those conversations give you any details about the shooting?
A. No.
Q. Just that he had done it?
A. Yes.
Q. Was there ever any discussion about anybody who was with the girl at the time?
A. No.
Q. During the more recent conversations with him, what other things did he say?
A. Well, we were talking about my father, because my father was in the county around the same time. He was asking, is there anything I can do for your dad, can I help him out in any way? How's your wife, how's everything at home. Real pleasant, you know.
Q. Was there any discussion with him about this case, the case in which he is charged with the girl's death?
A. Just my statements, our statements.
Q. What did he say about your statements?
A. He says he can get out of this, but the statements are going to hold him back.
MR. TALASNIK: Thank you, no further

questions, your Honor.

THE COURT: Mr. Davis?

CROSS-EXAMINATION

BY MR. DAVIS:

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

A. Sunday, yes.

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

A. Most positive, yes.

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

A. No.

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

A. Yes.

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

A. That was my wife, yes.

Q. You knew he was in jail for homicide?

A. Yes.

Q. Why did you send him the invitation?

A. We had extra invitations, extra stamps

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

Q. Big joke, wasn't it?

A. Not now.

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

A. Not really -- yeah.

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

A. Excuse me.

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

A. Yes.

Q. Yeah. What did you tell --

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

Q. And that was supposed to be a joke?

A. Yes.

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

A. My first statement, yes.

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

A. Yes.

Q. And you said today to Mr. Talasnik

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

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

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

Do you recall what your answer was?

A. No.

MR. DAVIS: Could we mark this?

THE COURT: D-6 for identification.

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

BY MR. DAVIS:

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

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

MR. DAVIS: I'm sorry.

MR. TALASNIK: Thank you.

THE COURT: You may proceed.

BY MR. DAVIS:

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

A. Yes, this is my statement.
Q. Why don't you take a look at Page 3. Do you have it?
A. I didn't. He didn't say --
THE COURT: Just read it to yourself, not out loud.
Q. Did you read the answer to the question, did he say how he was going to do it?
A. No. He didn't say.
Q. So on April 26th of 1988, when that question was posed to you by an investigator from the prosecutor's office, you told them he didn't say how he was going to do it, did you?
A. No. I didn't say he said how he was going to do it. He did not say.
Q. He didn't say he was going to lay and wait?
A. No. I thought you meant how he was going to do it. If he's going to shoot her -- no, no.
Q. Read the answer.
A. No. He didn't say.
He just went like this. That's as far as how he was going to do it, how he was

going to kill her.

THE COURT: Indicating again with the right hand out.

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

A. I don't recall.

Q. Had you been drinking that day?

A. Sunday, yes.

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

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

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

A. Yes.

Q. -- and you were doing renovations --

A. Yes.

Q. -- which created a certain amount of

noise?
A. No.
Q. It didn't create -- no noise to pull out the window sills and take down the drywalls?
A. Not much, no.
Q. Okay. You had been drinking or the group of you were drinking?
A. Yes. A six pack between three people.
Q. And Mr. Highlander initially came in and went to sleep or went to bed?
A. Yes.
Q. And he didn't say anything to you when he walked in?
A. No.
Q. In fact, you indicated you wouldn't let him in because you didn't know him.
A. Right.
Q. And you allowed someone else to answer the door?
A. Yes.
Q. And then when he woke up, who was he talking to you, you or Mr. Brooks?
A. I don't know really who he was talking to, but it was loud enough we all heard it.

So it was just as if he was talking to us.
Q. And you mentioned he had a wallet.
A. Yes.
Q. Can you describe this wallet?
A. No, no.
Q. You can't even describe the picture, can you?
A. No. He showed me a picture of the girl.
Q. What did she look like?
A. I can't even remember that, no.
Q. While he was in jail, why would you send him newspaper clippings?
A. You see, this was part of the deal. I would be allowed to ask him questions and he would answer them and I would send him the clippings.
Q. You had to send him newspaper clippings so you could ask him questions?
A. He asked. He was nice about it, so I agreed. I didn't see no harm.
Q. And you had to make the first call to the jail, didn't you?
A. Yes.
Q. He didn't know your telephone number.

A. No.
Q. When you called the jail, you told the jail that you were his brother?
A. Yeah.
Q. So you told them a lie so you could talk to Richard?
A. No. You see, Mike Reed started the thing at the end of his sentence, he says brother. That's how it came out.
Q. Mike Reed wasn't on the other end of that line when the person from the jail asked you what relation you were to Richard Highlander, was he?
A. No.
Q. And you said brother.
A. Yes.
Q. And you know what a brother is.
A. Yes.
Q. And were you his brother?
A. No.
Q. In fact, Michael Reed had quite a bit of influence over you, didn't he?
A. I wouldn't say so, no.
Q. Now, how did your name get to the police?

A. Through Robert Brooks.
Q. You didn't know Robert Brooks, did you?
A. I had met him before, yes. But I didn't know him.
Q. Who else was in the apartment that day that you were there?
A. Stephen Haywood.
Q. Anyone else?
A. No.
Q. Do you recall going to the police department in Margate?
A. Monday.
Q. You remember going down there?
A. Yes.
Q. How did you get to the police department?
A. Three officers or detectives had picked us up. We were just coming out of the liquor store.
Q. What did they put you in? Went down by police car?
A. Excuse me?
Q. Went down in a police car?
A. Unmarked vehicle.

Q. Detective's car?
A. Yes.
Q. Who else was in the car with you excluding the police officers?
A. My wife.
Q. Where was Michael Reed?
A. I don't know.
Q. Was he at the police department when you got there?
A. No.
Q. Was Stephen Haywood at the police department when you got there?
A. No.
Q. Wasn't it a fact all three of you were at the police department?
A. Together?
Q. Yes.
A. No, it isn't a fact.
Q. Isn't it true Michael Reed was telling you and Stephen Haywood what to say in regard to this matter?
A. No.
Q. Directing your attention to your refrigerator or Frigidare, you have certain newspaper articles pertaining to this matter

hanging off of there?
A. No.
Q. Isn't that what you told Mr. Highlander?
A. I don't recall.
Q. You don't recall that?
A. No.
MR. DAVIS: That's all, your Honor.
THE COURT: Mr. Talasnik?
MR. TALASNIK: Thank you.
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Mr. Stewart, your attention was directed to a transcript of a statement that you gave. I think you've got it before you there? This thing here.
A. This is the first statement?
Q. Yes.
A. Yes.
Q. You were asked questions about what Rick did or did not say about how he was going to do it. Do you remember being asked those questions?
A. Yes.
Q. Now, I want you to read beginning with

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

A. Did he say how he was gonna do it?

No. He didn't say, he just went like this.

He pointed as though he had a gun?

Huh-huh.

Q. When you told the officer in response to the question, he just went like this, what motion did you make to that officer to show what he meant?

A. I stuck my arm out like this.

THE COURT: Indicating the right arm out with the index finger pointed.

Q. Just like you did here?

A. Yes. The index finger pointed? Never mind, excuse me.

Q. Now, you were asked questions about drinking that day and you admit that the three workers shared one six pack?

A. Yes.

Q. Were you drunk?

A. No, no.

Q. Was your level of intoxication such

that you really don't remember Rick coming to the apartment?

A. No.

Q. Was your level of intoxication such that you really don't remember Rick pointing his fingers as you've shown us behind Mike Reed's head?

A. No.

Q. Was your level of intoxication such that the things you told us here today that went on in that apartments you really don't remember?

A. No.

Q. Did Mike Reed tell you what to say when you gave that statement to the police?

A. No.

Q. Did he tell you what to say when you came to court today?

A. Not once.

Q. Does the fact that you may have told the sheriff's officer when you called Rick that you were Rick's brother --

A. Yes?

Q. -- does the fact that you said that mean that what you told us about those

conversations is untrue?
A. Excuse me?
Q. Does the fact that you lied to the officer when you said you were Rick's brother, does that mean that you are lying to us today about those conversations?
A. No.
Q. The conversations actually took place?
A. Yes.
MR. TALASNIK: No further questions, thank you, your Honor.
THE COURT: Mr. Davis?
RECROSS-EXAMINATION
BY MR. DAVIS:
Q. You did talk to Michael Reed concerning this matter before you gave a statement, didn't you?
A. Yes. I have talked to him, yes.
Q. I said just before giving this statement back on April 26th, you talked to Michael, didn't you?
A. Monday morning, yes, sir.
Q. And Michael gave you certain instructions?
A. No instructions, no.

Q. Let me read this question. Did you have a conversation with Michael Reed today.

Your answer?

MR. TALASNIK: Excuse me, I don't know what is being referred to. If there is an exhibit that's been marked, I need to know what it is.

MR. DAVIS: D-6, your Honor.

MR. TALASNIK: And a page?

MR. DAVIS: Page is five.

MR. TALASNIK: Thank you, your Honor

BY MR. DAVIS:

Q. I'll read the question again.

Did you have a conversation with Michael Reed today.

Your answer was yes?

A. Yes.

Q. Several. The answer is yes, several. Take a look at the answer and question.

A. Yes.

Q. So, in fact, you had several conversations with Michael Reed before you went to the police department?

A. Yes. And the time was -- I don't recall the time. -- yes, I say I would have

had several conversations with him that day, yes.

Q. And he also gave you advise that day?

A. No advice. Just one piece of advice. He said don't go back to Lincoln Place.

Q. And what what were those conversations? Do you want to read your answer?

A. Yeah, this is true.

Q. What did he tell you?

A. He told me to stay away from Lincoln Place, that the cops would be there to ask questions.

Q. In fact, he's the one that called you and told you to go see the police, isn't it?

A. Yes, he was. That's because Robert Brooks had been over my place and given him my address. Eventually they were going to come over.

Q. Again, when you told me a few minutes ago it was Bobbie Brooks that told you, in fact it wasn't Bob Brooks but Michael Reed. He told you to go see the police.

A. Michael Reed, yeah, he said they would be there, they want to come and talk to me,

yes.

Q. So the question posed, Michael Reed told the police where to find you?

A. No. Michael Brooks told the police where to find me.

Q. I want you to take a look gain on Page 5, take a look at this question. Michael told you the cops wanted -- what did you say?

A. Told you the cops wanted? Yeah.

Q. You told them yes, Michael Reed told you the cops wanted you. Is that correct?

A. Yes.

MR. DAVIS: I don't have any further questions.

THE COURT: Mr. Talasnik?

MR. TALASNIK: I just want to try to clarify something I'm confused about.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Who was it that told you that the police were looking for you?

A. Michael Reed.

Q. And who was it that told the police where they could find you?

A. Robert Brooks

Q. Thank you. Did either of those people give you instructions as to what information you should supply to the police?

A. None.

MR. TALASNIK: Thank you, no further questions.

THE COURT: Mr. Davis?

MR. DAVIS: I have no further questions at this time, your Honor.

THE COURT: You may step down, Mr. Stewart, thank you very much.

(Witness excused)

THE COURT: Please put 15 minutes on my account and I will keep a running tally -- I may need the 15 minutes some day -- for today will be done. We will start again tomorrow morning at nine o'clock. Just the cautionary instructions, no discussions about the case among yourselves or anybody else. Please again insulate yourselves from any newspaper accounts or other media coverage with respect to the matter and we will see you in the morning. Have a nice evening.

(Whereupon, the jury leaves the courtroom).

THE COURT: Mr. Preston, you are by no means obligated to respond to this if you don't choose to, but given the discussion we had on the record before, if you would care to enlighten me as to the relationship between the issue you were concerned about and the testimony of this last witness, I might have a better feel than I now have for the specifics of what you are talking about. I understand the general nature, the conceptual nature of the issue, but I must confess, having heard the testimony of this witness, to be at a loss for the context. If you don't choose to, you need not make any response at this point.

MR. PRESTON: I think I would best address that hopefully within a day or so, Judge. I will make certain preparations to make sure that all the ground is covered.

THE COURT: Fine. I don't need any explanation.

Mr. Davis, you have tomorrow's agenda. Anything else that needs to be addressed for my attention.

MR. TALASNIK: Your Honor, I think I may have missed one of the cites that you

suggested. If you can just give me those again?

THE COURT: On Chambers?

MR. TALASNIK: Yes.

THE COURT: Johnson is the Appellate Division case and Jameson is the Supreme Court case. Wait, I have them here. Johnson is 223 Superior 122 and Jameson is 64 NJ 363.

MR. TALASNIK: Thank you, your Honor. I will try to be in a position to fill the calendar without any gaps.

THE COURT: You didn't do too badly today under all the circumstances. See you in the morning.

(Whereupon, the hearing adjourned)

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

Jukes Intake

Part I
pg. 131-260

A-59-89T4

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

STATE OF NEW JERSEY

vs.

RICHARD HIGHLANDER

TRANSCRIPT OF

TRIAL PROCEEDINGS

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

Atlantic County Courthouse
Mays Landing, New Jersey
Wednesday, June 14, 1989

BEFORE: STEVEN P. PERSKIE, J.S.C.

ORDERED BY: JAMES JUKES, ADPD

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

MURRAY TALASNIK, Assistant Prosecutor
On Behalf of the State

NATHAN DAVIS, Assistant Public Defender
and
MICHAEL PRESTON, Assistant Public Defender
On Behalf of the Defendant

Reported by: Konstantin Koletas, CSR
Atlantic County Courthouse
Mays Landing, New Jersey

Q. Did you ever do any work with him at a place called the Madison House?
A. Yes.
Q. Do you know about when you did that work?
A. It was last year, about the beginning of the summer.
Q. Now, were you to receive money as a result of your working with Mr. Highlander at the Madison House?
A. Yes.
Q. Now, Mr. Duff, in addition to working with Mr. Highlander, were you ever with him in a social setting?
A. Sometimes I invited him to my house.
Q. On any of the times you invited him to your house or any of the times really you were with him at work, did he ever talk about any problems he was having with his girlfriend?
A. Sometimes he would mention something like that.
Q. What kinds of things did he mention to you about problems with his girlfriend?
A. Well, he would say something like she ripped me off, something like that. He didn't

go into too many details about it.
Q. Did he ever discuss with you about any charges she brought against him?
A. Said something about a tax evasion or something like that. She told a few things on him.
Q. Okay. Now, how did he feel about her?
A. At that time it wasn't too good.
Q. At that time it wasn't too good?
A. No.
Q. What do you mean?
A. It made him angry.
Q. He would get angry when he would talk about her?
A. Yes.
Q. Was there ever any discussion with you about harming Gloria?
A. Yes. At my house one time.
Q. What is it that he wanted you to do?
A. He wanted me to bump her off.
Q. He wanted you to bump her off?
A. Yes.
Q. Tell us about that conversation.
A. Well, he was talking in general. He asked me would I be willing to bump her off

for so much money. I said no, I couldn't.
Q. How much money did he offer you to bump her off?
A. Five grand.
Q. How did you respond when he offered you $5,000 to kill her?
A. I couldn't do nothing like that.
Q. Was he specific about how much money you would get and at what times?
A. Well, the down payment, half now and half later after the killing.
Q. Half before the job?
A. Yes.
Q. And half after it was done?
A. Right.
Q. After you turned him down, after you refused to accept $5,000 for bumping her off, what was his next line of questions or comments to you?
A. He asked me if I knew someone who would.
Q. Who would do what?
A. Bump her off.
Q. How did you respond to that?
A. I don't know anyone.

Q. Did Mr. Highlander ever come to your house with a gun?
A. Yes.
Q. What did he do with that gun when he came to your house?
A. Asked me to keep it for him.
Q. Did he show it to you?
A. Yes.
Q. What did it look like?
A. Like a six shooter, Smith & Wesson.
Q. Do you know the difference between a revolver and an automatic?
A. Yes.
Q. Was this a revolver?
A. Yes.
Q. He asked you if you would store it for him?
A. Yes.
Q. Did you ask him why?
A. No. He told me.
Q. What did he tell you?
A. He said he was moving in with a friend that was kind of cooky and he was scared the guy might get ahold of the gun and harm himself.

Q. And as a result he wanted you to store the gun?
A. Yes.
Q. He trusted you?
A. Oh, yes.
Q. Did you agree to store the gun for him?
A. I did.
Q. Where did you keep the gun?
A. In my guitar case.
Q. Was it in any other kind of container?
A. It was wrapped up.
Q. Wrapped up in something?
A. Yes.
Q. Now, I want you to think forward from the day that he left the gun with you to a Monday, the 25th of April, 1988. Did you work that day?
A. Yes.
Q. Do you remember about what time in the morning of that Monday you could home from work?
A. About 10 o'clock.
Q. Do you remember seeing Mr. Highlander when you got home from work?

A. Yes. He was waiting on my front porch -- steps, rather.
Q. When he was waiting on your front steps, was anybody with him?
A. Yes. A black gentleman.
Q. A black gentleman?
A. Yes.
Q. Can you describe him any better than that?
A. He was about six feet, 180 pounds and a bald head.
Q. Bald head?
A. Right.
Q. Did you have a conversation with Mr. Highlander and this other black fellow that morning?
A. He introduced me to him.
Q. Did you invite them into your home?
A. Yes, I did.
Q. What went on with the three of you in your home?
A. Well, we had a couple of beers and proceeded to go pick up Mr. Highlander's check from the Madison House.
Q. Now, while Mr. Highlander was at your

house with the black gentleman that was introduced to you, was there any conversation about this gun that he had left with you?

A. I still had it for him.

Q. He asked you if you still had it for him?

A. Right.

Q. Did you show it to him?

A. Yes. We went back into the bedroom, opened the case up and looked at it.

Q. Did you remove it from the case?

A. I didn't.

Q. Who did?

A. He did.

Q. Did he look at it?

A. Yes.

Q. Did he take it with him?

A. No.

Q. What did he say?

A. He would be back later on that night to pick it up.

Q. Now, did they ask you, that is to say Rick Highlander and this black fellow that was with him, to take them any place?

A. Afterwards.

Q. After they looked at the gun?
A. Yes. They wanted to go to the Madison House to pick up his check.
Q. Did you, in fact, take them to the Madison House?
A. Yes.
Q. Whose car?
A. My car.
Q. Who drove?
A. I did.
Q. Did you arrive at the Madison House?
A. Yes.
Q. And was Mr. Highlander with you?
A. Yes, he was.
Q. And this black fellow?
A. Right.
Q. Somebody else, too?
A. A friend of the family.
Q. What went on at the Madison House?
A. He wanted -- Mr. Highlander went into the Madison House to get his check for work completed and he got the check and we proceeded down to Ventnor to get the check cashed.
Q. How do you know you were going to

Ventnor to get the check cashed?
A. Mr. Highlander asked me to take him there.
Q. Do you know about where you went in Ventnor to get the check cashed?
A. At a grocery store.
Q. Did the clerk in the grocery store just cash the check there?
A. No. He said he didn't have enough money to cash it.
Q. So what happened?
A. He took Mr. Highlander up to this bank and proceeded to whatever they had to do.
Q. What were you doing while the guy from the grocery store was taking Mr. Highlander to the bank?
A. I was sitting in my car waiting with the other gentleman.
Q. Did Mr. Highlander come back from the bank?
A. Yes.
Q. And what did he do?
A. We proceeded to go out to Ruffu Ford, out that way.
Q. Well, now, when Mr. Highlander got

back from the bank, did he get in your car?
A. Yes.
Q. Did it appear that he had been able to get the check cashed?
A. Yes. Everybody was happy.
Q. Everybody was happy?
A. Yes.
Q. What do you mean? Was there something in this for you?
A. Oh, yes. I work for him.
Q. And he was paying you?
A. That's right.
Q. After you left the grocery store, after Rick had gotten the check cashed, where did you then go?
A. We went down to rent cars from on the Black Horse Pike.
Q. Did you just go to one place or more than one?
A. Two places.
Q. Did you rent the car at the first place?
A. No.
Q. What about the second place?
A. At Ruffu Ford we rented the car.

Q. That's where the car got rented?
A. Yes.
Q. Who went inside to rent the car?
A. The first time? Mr. Highlander.
Q. What about the second time at Ruffu Ford?
A. Highlander and the other black gentleman went.
Q. Do you know where the money came from to rent the car?
A. From Rick.
Q. From Rick?
A. Yes, sir.
Q. Now, after the car was rented, did you have any kind of a conversation with Rick before you left?
A. Yes.
Q. What did he tell you?
A. Well, I was under the impression he was going to Florida.
Q. Was there any discussion about that gun that he had left with you?
A. That he would be back later on that night to pick it up.
Q. After telling you that he would be

back later on to pick it up that night, where did you go?

A. I went straight home.

Q. Did you remain home the balance of the day and into the night?

A. Yes, I did.

Q. Did Mr. Highlander, in fact, come back that night?

A. Yes.

Q. Do you know about what time it might have been when he came back?

A. Probably about 6:00 or 7:00, I guess.

Q. Was it already dark or getting on to dark?

A. Dark.

Q. It was?

A. Yes.

Q. When he came in, what did he do?

A. He asked -- he spoke to everybody in the front and came back to talk to me.

Q. What did he say when he came back to talk to you?

A. He said he came to pick up his piece.

Q. And after he said he had come back to pick up his piece, what did you do?

A. He left the place.
Q. I'm sorry?
A. He left the place.
Q. What about the gun?
A. He picked it up.
Q. He picked it up? How do you know?
A. I gave it to him.
Q. You gave him the gun?
A. Right.
Q. And what did he do with the gun?
A. He put it somewhere on himself and left.
Q. And he left?
A. Yes.
Q. Is that the last time you saw Mr. Highlander?
A. Yes.

MR. TALASNIK: No further questions.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Duff, you indicated that during this period of time you worked for Mr. Highlander?
A. Yes.

Q. And approximately how long had you worked for Mr. Highlander before this incident?
A. About two or three years.
Q. About two or three years?
A. Yes.
Q. Through that two or three year period, I assume you got to know Mr. Highlander pretty well?
A. Yes.
Q. And I would also assume that through that two or three year period that he got to know you pretty well?
A. Yes.
Q. And would he visit your home quite often?
A. Yes, sometimes.
Q. Directing your attention to this date of April 25th, he came to your home on that date?
A. Yes.
Q. And you indicated the purpose he came to your home was to pay you money?
A. Yes.
Q. He owed you money for what?

A. For a job completed.
Q. After you took him around to the grocery store --
A. To take care of business.
Q. After he took you to the grocery store, he paid you?
A. Yes.
Q. Is it not a fact he also owed you an additional $50.00 he was supposed to come back and give you that night?
A. Yes. Not to me, but to Brian.
Q. Brian?
A. Yes.
Q. Who is Brian?
A. That's my old lady's nephew.
Q. Where did Brian live at that time?
A. Right then he stayed with me.
Q. In order to pay Brian, he would have to come back to your house?
A. Yes.
Q. He indicated that to you earlier that day he had to come back and pay Brian $50.00?
A. Yes.
Q. When he was at your home the first time you saw him on April 25th when you saw

him with the other black gentleman, is it not a fact that you and he were talking business?

A. About the Madison House?

Q. Yes.

A. Yes.

Q. About what other place?

A. The Quality Inn.

Q. The Quality Inn?

A. Yes.

Q. And what was he telling you?

A. Well, one had paid and the other hadn't paid.

Q. Okay. Was he giving you instructions of what he wanted you to do with regard to these two premises?

A. Yes.

Q. What was he indicating to you?

A. He wanted me to go finish work on the Madison House.

Q. Whether you say finish work, what type of work?

A. We were doing scaffolding work and ginny chair work.

THE COURT: What was that word?

A. Ginny chair.

Q. What was that, ginny chair?
A. That.
THE COURT: I'm glad you asked that question, Mr. Davis.
A. It's a cylinder you put a rod down and you slide down the edge of the building on the outside.
Q. Now, when he was telling you what he wanted you to do, were you under the impression he was going to leave town?
A. Yes, I was.
Q. Were you under the further impression that he was going to return?
A. Yes.
Q. Now, during that conversation during that morning when he was telling you what to do, was there anything unusual about what you should do for the next couple of days?
A. That's normal.
Q. That was normal?
A. Yes.
Q. Was it normal for him to come to your house and tell you what to do?
A. That's right.
Q. Now, at that point you said you had a

weapon.
A. Yes.
Q. And that weapon was contained in your guitar case?
A. Yes.
Q. Now, was it wrapped in anything or how was it in your guitar case?
A. Wrapped in a cloth.
Q. Wrapped in a cloth?
A. Yes.
Q. What type of cloth was it?
A. A regular cotton cloth.
Q. Just a cotton cloth?
A. Yes.
Q. What color was this?
A. White.
Q. White?
A. Yes.
Q. And you're the one who put it in your guitar case?
A. Yes.
Q. And when he came that afternoon or that morning, was it taken out of the guitar case?
A. Yes.

Q. And where is your guitar case located?
A. In my bedroom.
Q. Was that gun taken out of the bedroom that morning?
A. The morning? When Rick came to see me?
Q. The 25th.
A. Not before he asked me to take it out.
Q. When he took it out of the case, where was it taken, if anywhere?
A. He looked at it, that's all.
Q. Right there in the bedroom?
A. Yes.
Q. And put it right back in the case?
A. Yes.
Q. So it wasn't taken out into the living room and you played with it and he played it with and the black man looked at it?
A. I don't think so.
Q. And was it put back in in the same wrapper, this white wrapper?
A. Yes.
Q. Who put it back in the guitar case?
A. I did, I believe.
Q. And he came back later that night.

Who took it out of the guitar case?
A. I did.
Q. And it was still in this white wrapper?
A. Right.
Q. Now, you indicated that -- did you know Gloria Simonelli?
A. No.
Q. You didn't know her?
A. Not personally.
Q. Did you know about her?
A. I heard about her.
Q. And that was through who?
A. Mr. Highlander.
Q. And did you know that there came a time when Mr. Highlander and Gloria had split up?
A. Yes, I heard about that.
Q. How did you hear about that?
A. Mr. Highlander mentioned it.
Q. He mentioned it to you?
A. Yes.
Q. Did he talk much about Gloria after they split up?
A. Not too much, except they broke up, he

didn't want to talk about it.
Q. He didn't want to talk about it?
A. Yes,
Q. Did he appear to be upset or hurt about it?
A. He seemed to be upset.
Q. Upset?
A. Yes.
Q. Now, you've indicated he offered you $5,000 and did he do that in a serious vein, Mr. Duff?
A. Pardon?
Q. Did he do it in a serious manner?
A. Not too serious.
Q. He had known you?
A. Three or four years.
Q. Did he know you would do something like that?
A. No.
Q. Pardon me?
A. No.
Q. Did you take him serious when he was talking to you?
A. No, I didn't.
Q. And did he ever mention it again to

you?
A. That was it.
Q. Did he mention his intent of doing any harm to Gloria to you?
A. No.
Q. And when he came back that night of April 25th and he picked up the weapon, what was your impression that he was about to do?
A. He was taking all his belongings and going down south to see his dad.
Q. Do you know where that was?
A. Florida.
Q. And when you gave him that weapon, what did you give it to him wrapped in, if anything?
A. Some cotton thing, piece of fabric.
Q. Piece of fabric?
A. That's all.
Q. It wasn't a brown paper bag?
A. I don't think it was.
Q. A white fabric?
A. I'm not sure.
Q. Your recollection was a white fabric?
A. Yes.
Q. Now, Mr. Duff, when you were initially

-- when you gave the statement to the police -- how did you get to the police department? Did they contact you or did you contact them?

A. They contacted me.

Q. Where were you taken?

A. I was taken out to the crime division.

Q. Do you know what city that is in?

A. In Northfield, I believe.

Q. What time of day or night was that about?

A. That was in the afternoon.

Q. How long did you stay out there?

A. Four hours.

Q. Pardon me?

A. Four hours.

Q. Were you questioned for four hours?

A. Almost.

Q. Almost. During that four hour period, you told the police that you didn't know anything about this gun, that you never saw the gun, you never had the gun, you never saw Richard Highlander with a gun.

A. No.

Q. No what?

A. I don't believe I said that.

Q. Didn't you initially deny that you knew anything about this?
A. No.
Q. You didn't?
A. No.
Q. Do you recall speaking to Sergeant Porchelli on April 28th, 1988?
A. Sure.
Q. And during the initial part of your conversation to Sergeant Porchelli, you indicated you knew nothing about this situation?
A. I don't remember that.
Q. You don't remember?
A. No.
Q. Okay. You say you don't remember or it didn't happen?
A. You have a statement from me.
Q. I know he got a statement from you. He has more than one statement from you, doesn't he?
A. Yes.
Q. Pardon?
A. Yes.
Q. And what I'm talking about is your

first statement. And your first statement that you gave is that you didn't know anything about this situation. Isn't that the first statement you gave?

A. That's right.

Q. So now you remember you gave that statement, that you didn't know anything about this situation. Is that true?

A. That's true.

Q. And then after being out there for four hours, now you know something about that statement.

A. Right.

Q. Well, if you knew something about the statement, why did you tell the police you didn't know anything about the statement?

A. I didn't want to get involved.

Q. You didn't want to get involved. Is everything you said in your statement, does that come from your mouth or did the investigators help you with your memory?

A. They gave me a line of questions to answer.

MR. TALASNIK: Excuse me, your Honor. At this point I want to approach side

bar with Mr. Davis.

THE COURT: All right.

(Whereupon, the following occurred at side bar)

MR. TALASNIK: Judge, at this point I want to prevent a hand grenade from going off. This witness was given a polygraph test. After his first statement and before the final statement he was given a polygraph test. When he was advised he failed certain questions, the final version came through. When I interviewed this witness, I cautioned him about not referring to that fact. That's been some time, and the last thing I want to happen is for this witness in responding to Mr. Davis to refer to the giving of the polygraph, since that accounts for a chunk of that four hour period between the first statement and the last statement. At this point I'm asking for instructions from the Court to prevent this from happening.

MR. DAVIS: Well, Judge, I'm not going to ask him about the polygraph.

THE COURT: Well, just be sure you ask him questions that don't allow him the

opportunity to volunteer it.

MR. DAVIS: What Mr. Preston is indicating, you can caution him outside of the presence of the jury, if you wish.

THE COURT: Well, I suppose I could. Do you have any idea how much longer your cross will take. I'm looking at the schedule, not trying to limit you.

MR. DAVIS: Only a few minutes. I'm just about done, really.

MR. TALASNIK: Maybe we can break for lunch. We can accomplish that and come back at 1:30.

THE COURT: I guess that's probably safer. By the time I get the jury out -- it is almost 10 after 12:00. By the time I get them out, caution him and bring them back in, it would almost be silly.

(Whereupon, the side bar ended)

THE COURT: 20 and 15 make 35. Keep a running tally. I'm 35 minutes to the good. I want to make sure we get our account in order. We will recess a few minutes early for lunch while I take care of the situation that counsel have brought to my attention and we

will finish up with this witness and have the remaining witnesses this afternoon starting at 1:30.

Again, please remember during your luncheon recess to be careful not to engage in any discussions about anything having to do with the case. We will see you after lunch.

(Whereupon, the Jury leaves the courtroom)

THE COURT: Mr. Duff, you may step down in just a moment. During the course of the luncheon recess you should be careful not to discuss the substance of your testimony with anybody. Now, let me ask, it has been represented to me by Mr. Talasnik that during the period of time that you were in the prosecutor's office that day, you had a lie detector test

THE WITNESS: That's correct. I was not supposed to say that.

THE COURT: It has been represented to me that was not to be disclosed unless you were specifically asked about it. Is that also your understanding?

THE WITNESS: Correct.

THE COURT: I simply want to remind you and caution you that you will not be asked about it and you shouldn't mention it. If, in fact, one of the lawyers specifically asks you a question which refers to the lie detector, you may answer it. But I don't expect it to happen and therefore I don't expect you to answer it

THE WITNESS: Thank you.

THE COURT: Mr. Talasnik, what do you have on the agenda for this afternoon?

MR. TALASNIK: Your Honor, I believe I will have available Terri McCabe, Patrick Sullivan, Tania Martin and Patrolman Oakes from the Margate police department.

THE COURT: Okay. Got all that, Mr. Davis?

MR. DAVIS: Yes. I'm all right.

MR. TALASNIK: Under those circumstances, I will definitely not have witnesses to present on Friday. As of tomorrow, I will exhaust the witnesses that were available to me this week. The balance are not available until next Monday.

THE COURT: And again for the

record, next Monday you will have whom.

MR. TALASNIK: Judith Breyers, the officers from the FBI and the local officers involved in the transport and confession taking.

THE COURT: Which I estimate that we would be able to accomplish by Tuesday. That's it?

MR. TALASNIK: At the present, that's about it. There may be a couple of other witnesses that were on vacation this week that I may want to bring in of a very brief duration, but I expect to be able to rest my case by the close of court on Tuesday.

MR. DAVIS: I'll be ready Wednesday morning, then, Judge.

THE COURT: I don't doubt it. See you after lunch.

(Luncheon recess)

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

(Jury enters the courtroom)

THE COURT: All right. Mr. Davis, you may proceed.

BY MR. DAVIS:

Q. Mr. Duff, just before lunch break, you indicated you had initially indicated to the prosecutor's office that you didn't know anything about this situation.

A. Right.

Q. And in particular about the gun.

A. Right.

Q. Now, you further indicated to me that you were in the prosecutor's office about four hours.

A. Right.

Q. Did the prosecutor put any heat on you in any fashion to make this statement, this last statement you made?

A. Yes.

Q. They did?

A. Yes.

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

THE COURT: Mr. Talasnik?

REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Now, Mr. Duff, the first time that you were interviewed on the day that the interview process began, you did not disclose your information about the gun; right?
A. No.
Q. Why didn't you volunteer --
MR. DAVIS: If he could answer yes or no without shaking his head?
THE COURT: He said no.
BY MR. TALASNIK:
Q. Why didn't you volunteer the information about that?
A. I don't believe in ratting on people.
Q. You don't believe in ratting on people?
A. That's right.
Q. You didn't want to get anybody in trouble?
A. Right.
Q. During the time of the questioning that occurred after that, did anybody threaten you?
A. No.

Q. Did anybody assault you?
A. No.
Q. Did anybody push you around?
A. No.
Q. Did anybody do anything that put you in fear?
A. No.
Q. After some additional conversation with investigators, did you agree to give them a truthful statement?
A. Yes.
Q. And do you recall that this statement was given the very same day that you initially denied knowing about the gun?
A. Yes.
Q. And that truthful statement was on tape even, wasn't it?
A. Yes.
Q. Now, I'm going to ask you a series of questions and answers and ask you whether you recall that these were the questions and answers contained on that taped statement; okay?
A. Yes.
Q. "QUESTION: Did there come a time

when Mr. Highlander brought a gun over to your house?

"ANSWER: Yes."

A. Right.

Q. "QUESTION: Okay. Tell us about that.

"ANSWER: He brung a gun over my house between three weeks to two weeks prior to this.

"QUESTION: So about two weeks ago, two and a half, three weeks ago --

"ANSWER: Yeah, he wanted me to keep it because Michael, the guy he was staying with, was kind of erratic and he might harm him or harm himself, you know, so he didn't want in his -- over his house."

A. Right.

Q. "QUESTION: Okay. Can you describe the gun for us?

"ANSWER: It was like a six shot colt or a revolver."

A. Right.

Q. "QUESTION: All right. Small, large?

"ANSWER: Medium size, six inch barrel, I believe."

A. Right.
Q. "QUESTION: Okay. Did you look in the barrel to see what was in it?
"ANSWER: Yeah, I looked in the barrel and it had hollow points in it and had a few regular round ones."
A. Right.
Q. In that same statement, do you recall the following question and answer.
"QUESTION: Okay. What did he ask you to do when you brought it over?
"ANSWER: He said he wanted me to keep it for him and until he needed it."
A. Right.
Q. "QUESTION: Okay. And what did you do at that point?
"ANSWER: Well, I gave the guy a beer and told him to have a seat and, uh, me and Rick walked in the back. He asked me -- he didn't want to pick up the gun right now. He wanted to pick it up later on that afternoon, after he paid us for work, you know."
A. Right.
Q. "QUESTION: And had he previously told you that he was going to pick the gun up

that day?

"ANSWER: Yes, he told me that earlier when I first seen him on the steps and then he went upstairs and told me the same thing all over again.

A. Right.

Q. "QUESTION: All right. Now, did there come a time -- did you have any other phone conversations or anything else with Rick Highlander that afternoon?

"ANSWER: No, I did not. I knew he was coming back."

A. Right.

Q. "QUESTION: All right. Because he indicated --

"ANSWER: Earlier that he would be back by to pick up his piece.

"QUESTION: Okay. Meaning the gun?

"ANSWER: The gun."

A. Right.

Q. "QUESTION: Meaning the gun?

"ANSWER: Yes."

A. That's correct.

Q. "QUESTION: Did there come a time later that day that he did come by to pick up

the gun?

"ANSWER: Yes, it was dark when he came by."

A. Right.

Q. And all of that was contained in the same statement that you gave the same day that you were initially interviewed by the police?

A. Yes.

Q. And you weren't promised anything to give that statement?

A. No.

Q. Nobody threatened you?

A. No.

Q. Nobody beat you?

A. No.

Q. Nobody put any words in your mouth?

A. No.

MR. TALASNIK: No further questions.

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Somebody kept you there for four hours to get you to make that statement?

A. I was there.

Q. You were there, weren't you?

A. Yes.
Q. You didn't want to be there, did you?
A. No.
Q. Did they allow you to contact anybody to get you out of there?
A. No.
Q. You indicated to me that the prosecutor's office put heat on you. What do you mean by that?
A. A lot of questions.
Q. Questions?
A. Yes.
Q. And did they keep pushing you for answers?
A. Well, they kept asking the same thing over and over.
Q. You gave them the original statement. They didn't stop with what you originally told them?
A. No.
Q. They kept pushing for another statement?
A. Yes.
Q. Now, you've told us today that one statement is true and one statement is false?

A. Almost.
Q. What do you mean almost?
A. Well, one is exactly the truth and one isn't exactly the truth either.
Q. Which one is that?
A. The first one.
Q. What about the second one?
A. That's complete.
Q. Pardon?
A. In detail.
Q. Detail?
A. Yes.
Q. Now, when you initially were questioned by the police, you told them the first statement was true?
A. Yes.
Q. And then you turned around and told them the first statement is untrue.
A. I didn't say that.
Q. Didn't you -- well, is the first statement true?
A. Partially.
Q. Partially true?
A. Right.
Q. Is it true when you said you knew

nothing about this?
A. That was a lie.
Q. Is it true when you said there was a no gun?
A. That was a lie.
Q. What was true?
A. The second statement.
Q. Pardon me?
A. The second statement.
Q. What was the second statement?
A. He had a gun.
Q. I want you to listen to me, Mr. Duff. Maybe you don't understand me. When you were first questioned by the police, you told them you knew nothing about a gun, is that true?
A. Yes.
Q. And you told them you didn't know anything about Rick Highlander and this gun?
A. Did I say?
Q. You said you didn't know anything about the gun being in your house, didn't you?
A. I didn't say that, did I.
Q. Did you tell them that you gave Rick Highlander the gun?
A. Yes.

Q. The first time?
A. Yes.
Q. Do you recall Mr. Porchelli talking to you on April 28th?
A. Yes.
Q. And do you know what I mean when I say a pre-interview with regard to making a statement?
A. They ask the questions first and then after that --
Q. What the police do, they question you first to find out what you are going to say and then after they find out what you are going to say, then they make a final --
A. Statement.
Q. -- statement, is that true?
A. That's right.
Q. During the course of this first statement, they asked you had you ever seen Mr. Highlander with a gun.
A. That previous -- that same day?
Q. That same day we were talking about. Your answer was no?
A. Right.
Q. And they asked you if you knew

anything about the homicide and your answer was no?

A. I didn't.

Q. Okay. Then they kept questioning you and then you made a second statement which, as Mr. Talasnik has indicated to you, is a statement that they took down upon tape; is that true?

A. Yes.

Q. Before they took that statement down on tape, they went through a long series of questions with you, questions and answers?

A. Right.

Q. And that first set of questions and answers that you gave them, they didn't stop there, did they?

A. No.

Q. And you're telling us today that that first set of questions and answers was not true.

A. Partially.

Q. Well, let me ask you one phrase. Did you tell them you had never seen Rick Highlander with a gun?

THE COURT: You are talking about

the beginning?

MR. DAVIS: The very first statement.

A. Yes.

Q. You then later turn around and the various questions that Mr. Talasnik read back to you, the questions and answers which indicated you did see him with a gun?

A. Yes.

Q. Now you are telling us that your first statement was untrue?

A. Part of it.

Q. Just that one phraseology.

A. Yes.

Q. Was untrue?

A. Yes.

Q. So, in fact, when you gave that initial statement, you were not being truthful with the police is what you are telling us?

A. That's right.

Q. Before you gave that statement, didn't you indicate to them that you were going to tell them the truth?

A. Yes.

Q. But you didn't tell them the truth.

A. The first time?
Q. The first time.
A. That's right.
Q. Is that true?
A. Yeah.
Q. Now you want us to believe because you are telling us that you are telling us the truth today that it is the truth?
A. Yes.
Q. But you're capable of telling people that you will tell the truth and not tell the truth.
A. Sounds like it, don't it?
Q. Pardon me?
A. I guess it sounds like it, don't it.
Q. I didn't understand.
THE COURT: He said I guess it sounds like that, doesn't it.
Q. Not only does it sound like that, that's the way it is, isn't it?
A. That's the way it sounds to me.
MR. DAVIS: That's all I have.
THE COURT: Mr. Talasnik.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. The statement I read to you from, the one that was on tape, the questions and answers that I read to you, that was the truth?
A. Yes.
Q. And is that the same truth you told us here today?
A. Yes.
Q. And the reason you didn't give it all up front is why?
A. I don't like to rat on people.
MR. TALASNIK: No further questions.
THE COURT: Mr. Davis?
MR. DAVIS: No, I don't have nothing else.
THE COURT: You may step down, Mr. Duff. Thank you very much for coming.
(Witness excused)
MR. TALASNIK: The State calls Terri McCabe.
THERESA McCABE, having been duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. TALASNIK:
Q. Where do you live, Ms. McCabe?

A. 27 South Little Rock in Ventnor.
Q. How long have you lived in the Ventnor area?
A. Three years.
Q. What kind of work do you do?
A. I'm a VIP representative at Trop World.
Q. While working at Trop World, did you come to know a young lady by the name of Gloria Simonelli?
A. Yes.
Q. How well did you come to know her?
A. Very well. We were very close friends.
Q. Would you see each other after work?
A. Yes.
Q. What about your days off?
A. We made sure we had the same days off every week.
Q. And would you do things together socially?
A. Yes.
Q. How long have you known Gloria Simonelli?
A. Seven years.

Q. Did you become aware of Gloria's involvement with a man by the name of Rick Highlander?
A. Yes.
Q. How did you become aware of that relationship?
A. She told me about it.
Q. And do you recall when that might have been that you first found out about it?
A. At the end of the summer.
Q. Of what year?
A. Of last year, '88.
Q. Maybe '87?
A. I mean '87.
Q. Okay. Now, did you continue to have a friendship with Gloria during the time that Gloria and Rick were dating?
A. At the beginning, yes.
Q. What do you mean at the beginning?
A. At the beginning of the relationship, we were still friendly, but as the relationship grew, she wasn't allowed to stay in contact with me.
Q. Did you have some problems with Rick?
A. Personally? No. No.

Q. All right. But you felt there was some interference?
A. Gloria told me that she wasn't allowed to hang around with me.
MR. DAVIS: I object to this, your Honor.
THE COURT: Objection will be sustained.
BY MR. TALASNIK:
Q. Now, did you learn at some point that Gloria and Rick moved in together?
A. Yes.
Q. And where were they living together?
A. On Monroe Avenue in Margate.
Q. Whose place was that?
A. It was Gloria's condo.
Q. Had she lived there before Rick moved in?
A. Yes.
Q. And did she continue to live there after Rick moved out?
A. Yes.
Q. Now, during March of 1988, did you become aware of an assault incident that involved Gloria and Rick?

A. Yes.
Q. How did you become aware of this?
A. From Jean Bruni, who was Gloria's supervisor at work.
Q. Was Jean also a social friend of yours?
A. Yes.
Q. Was she a social friend of Gloria's?
A. Yes.
Q. When was the first time you saw or spoke with Gloria after that incident?
A. A week later.
Q. And when you saw her a week later, how did she seem?
A. Very upset. Very upset and she was bruised and her eyes were -- she had like red dots in her eyes from broken blood vessels and her finger was broken, splint on it.
Q. Did you continue to maintain a social relationship with Gloria during the weeks that followed?
A. Yes.
Q. Are you a good friend of Gloria's?
A. Yes.
Q. Was there ever a time during those

weeks when you discussed with Gloria any criminal charges that had arisen?
A. Yes.
Q. What kinds of discussions did you have with her regarding her intentions?
A. Gloria told me that she was going to go all the way and press charges on Rick and that when she went to the police to press the charges, she found out he had a prior record --
Q. Terri, just answer the question, okay? I can't --
A. Yes, the answer is yes.
Q. All right, thank you.
Do you know a place known in Margate as the Greenhouse?
A. Yes.
Q. Have you ever been there before?
A. Gloria and I went there often.
Q. Now, you've been there by yourself before?
A. Yes.
Q. Have you ever been there with Gloria?
A. Yes, many times.
Q. Would that have been including the

latter part of 1987 and early 1988?
A. Yes.
Q. I want you to now focus on the day of April 25, 1988. Do you remember whether you were working that day?
A. No, I was off.
Q. That was a Monday. Was that a regular day off?
A. Yes, we both had off Sunday and Monday.
Q. By we both, who are you referring to?
A. Gloria and I.
Q. Did you see Gloria on the 25th of April?
A. Yes.
Q. Where did you see Gloria?
A. We met for lunch at Cousin's Country Inn over in Bargaintown.
Q. Was anybody else there that you knew?
A. Yes.
Q. Who might that have been?
A. Jeff Henderson, Jean Bruni and Cathy Bonky, Sue Donato and Jerri, a secretary from work.
Q. What went on at Cousin's?

A. We celebrated our -- their secretary's -- I think it was secretary's day that week and we all took her out for lunch.
Q. How long did you remain at Cousin's?
A. For at least an hour and a half to two.
Q. Was Gloria there with you?
A. Yes.
Q. Had she come with somebody or alone?
A. No. She drove herself.
Q. Do you know what kind of car she had?
A. A black Toyota, I believe a Toyota.
Q. At some point in the afternoon, was a decision made to go someplace else?
A. Yes. We decided to go to the Greenhouse.
Q. And is this the same Greenhouse you have told us you and she had been to before?
A. Yes.
Q. Was Gloria going to go with you or was she going to get there on her own?
A. She was going to go there on her own.
Q. What time did you get to the Greenhouse?
A. About five o'clock.

Q. And do you know about what time Gloria got there?
A. She got there about 30 minutes later, I believe.
Q. Are you sure on the times?
A. Not positive.
Q. Okay. Was it still light out when you got there?
A. Yes.
Q. Was it still light out when Gloria got there?
A. Yes.
Q. Do you know how Gloria got to the Greenhouse?
A. She drove her car.
Q. Now, what went on in the Greenhouse?
A. What went on in the Greenhouse? I was drinking and we were just talking and we had called a few of our friends to come and meet us over there to, you know, spend the day with us.
Q. How was Gloria?
A. She seemed for the first time in a long while to be a little relaxed and more comfortable than she had been for a while.

Q. Was she involved in this calling of additional friends to come over?
A. Yes. She was very happy and she felt like having all her friends around her that day.
Q. Was Gloria drinking?
A. No.
Q. How long did you stay at the Greenhouse?
A. Until about nine o'clock, I believe.
Q. Now, do you remember what Gloria was wearing that day?
A. Yes.
Q. Can you describe it for us?
A. She had on a white cotton sweater with a pair of pre-washed paper bag type jeans, which are the kind that fold over at the waist.
Q. Anything else?
A. No, not that --
Q. Do you recall if she had a jacket with her?
A. No.
Q. Now, do you know a fellow by the name of Patrick Sullivan?

A. Yes.
Q. How do you know Patrick Sullivan?
A. He used to work at Tropicana.
Q. Did you see Patrick Sullivan at the Greenhouse that night?
A. Yes.
Q. Had Patrick Sullivan come with Gloria?
A. No.
Q. He came at some other time?
A. Right. Maybe about an hour before we left I think he showed up.
Q. Now, you say you knew Patrick Sullivan. Do you know whether Gloria knew Patrick Sullivan?
A. Casually. They weren't friends. They were more of an acquaintance type. She knew his brother who had been a director of marketing over at the Tropicana. It was that type of thing. They weren't really friends. He was her neighbor, he lived around the corner.
Q. Now, was Patrick Sullivan by himself or did he have a companion?
A. I don't know. I think he might have been with a friend. I'm not really sure.

Q. Was he asked to join you and Gloria and the rest of the people there?
A. Yes, he was, through Jeff Henderson, who was there, who is a friend of his.
Q. How long did you stay at the Greenhouse?
A. Until about nine o'clock. From 5:00 till around 9:00.
Q. When you determined to leave the Greenhouse, was Gloria still there?
A. Yes.
Q. Was Pat Sullivan still there?
A. Yes.
Q. Did you have any kind of a conversation with Gloria before you left?
A. I just told her to take it easy and that I loved her and I would talk to her later.
Q. Did you talk to her later?
A. No.
Q. What was the next thing that you remember happening?
A. The next thing I remember happening, we went home, back to my house, my boyfriend and I, and later that evening Jean Bruni

called and my boyfriend answered the phone and he told me to get dressed, hurry up, Gloria had been killed.

Q. Did you then go to the police station?

A. Yes, we did.

Q. Were you interviewed there?

A. No. I don't believe so -- wait. They took our names and everything because we had been with Gloria that night. They did take our names, addresses and phone numbers.

MR. TALASNIK: Nothing further.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Miss McCabe, you indicated you went to Cousin's with Ms. Simonelli?

A. Yes.

Q. Was that a pre-planned luncheon?

A. Yes.

Q. Who knew about it?

A. Just the girls that worked in the gift shop, supervisor, myself, my roommate knew I was going there.

Q. And when you left Cousin's to go to the Greenhouse, prior to going to Cousin's, did you know you would end up in the

Greenhouse that night?
A. No.
Q. Was that a spontaneous agreement between the group at Cousin's?
A. We had decided to go to the Greenhouse while we were at Cousin's, yes.
Q. Ms. Simonelli was in that group the entire time?
A. Yes.
Q. At Cousin's and then over to the Greenhouse?
A. Correct.
Q. Now, did she have a companion with her when she went to Cousin's, a male companion?
A. No.
Q. When she went to the Greenhouse, did she have a male companion?
A. No.
Q. When you got to the Greenhouse, approximately how many people would you say would be in your group? At the maximum.
A. Five.
Q. Just five? Who were the five?
A. Jeff Henderson, Jeannie Bruni, Cathy and myself and Gloria.

Q. Did somebody else come to that group or join that group later?
A. Yes.
Q. Who?
A. Patrick Sullivan.
Q. Anyone else?
A. No, not to my knowledge.
Q. Eventually this group started to leave?
A. Correct.
Q. And when you left, who did you leave in the Greenhouse?
A. Who did I leave in the Greenhouse?
Q. Yes. In that group. I'm talking about that group you just indicated.
A. Gloria Simonelli and Patrick Sullivan.
Q. So when you left, you left Gloria Simonelli in the Greenhouse with Patrick Sullivan?
A. Correct.

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

THE COURT: Mr. Talasnik.

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

THE COURT: You may step down, Ms. McCabe, thank you very much

(Witness excused)

MR. TALASNIK: The State calls Patrick Sullivan.

PATRICK SULLIVAN, having been duly sworn, was examined and testified as follows:

THE COURT: Mr. Sullivan, good afternoon.

Please be good enough to either keep your voice up or sit forward and use the mike so we can all hear you. Thank you.

Mr. Talasnik?

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Sullivan, what kind of work do you do?

A. I'm a dealer.

Q. Do you work with a casino in Atlantic City now?

A. Yes.

Q. Which casino?

A. Bally.

Q. Mr. Sullivan, back in the spring of 1988, where were you living?

A. Margate, New Jersey.
Q. Did you know a young lady by the name of Gloria Simonelli back then?
A. Yes.
Q. How did you know Gloria Simonelli?
A. From my previous employment at the Tropicana Hotel.
Q. How long have you known of Ms. Simonelli?
A. Since approximately late 1982 or early '83.
Q. Did the two of you ever date?
A. No, no.
Q. Do you know where she lived at that time in relation to where you yourself lived?
A. Yes.
Q. Was it close?
A. Yes.
Q. Do you know a place in Margate known as the Greenhouse?
A. Yes.
Q. What kind of place is it?
A. It's a restaurant and lounge.
Q. Have you ever been there before?
A. Yes.

Q. Have you been there on more than one occasion?
A. Yes.
Q. I want to direct your attention to a Monday evening, April 25, 1988. Were you at the Greenhouse that night?
A. Yes.
Q. Do you remember about what time you got to the Greenhouse?
A. Approximately 7:15 to 7:30.
Q. In the evening?
A. Yes.
Q. Was it still light out or dark?
A. It was light out.
Q. How did you get to the Greenhouse that evening?
A. Friend of mine and myself had been playing golf and we went there after we finished our golf.
Q. That friend you are referring to, was that Gloria?
A. No.
Q. When you went into the Greenhouse, did you see Gloria?
A. Yes.

Q. How long had it been since you had seen Gloria?
A. Two years, two-and-a-half years maybe.
Q. Did you go up and talk to her?
A. Yes.
Q. What did you talk about?
A. What we've been doing with our lives since we last seen each other.
Q. Can you describe what she looked like?
A. She's about 5' 8", long dark hair, curly, had a white sweater kind of shirt and dress jeans on.
Q. Okay. Anything else you remember about her physical condition?
A. She had a splinter or cast on her finger.
Q. Did you ask her about that?
A. Yes.
Q. Was there some discussion about how that got there?
A. Yes.
Q. Was Gloria alone or was she with others when you first saw her there that evening?
A. She was with others.

Q. Do you know any of those others?
A. Yes.
Q. Who do you know them to be?
A. Jeff Henderson, Jean Bruni, Terry -- I don't know her last name -- a guy named Dan. Didn't know his last name, but knew them by their first name. And they knew me by my first name.
Q. All right.
A. That's all.
Q. As the evening progressed, did some members of the group leave?
A. Yes.
Q. Do you recall who left?
A. Everybody left.
Q. Everybody but who?
A. Myself and Gloria.
Q. Do you know about what time it was when everybody had left and just you and Gloria were left together at the Greenhouse?
A. About 8:30.
Q. Did the two of you continue to stay at the Greenhouse for some period of time?
A. Yes.
Q. What were you doing?

A. Talking.
Q. At some point, did the two of you determine to leave?
A. Yes.
Q. Do you know about what time it was when you determined to leave the Greenhouse?
A. About 9:15, 9:20.
Q. Was there any discussion about how you were going to get home or how she was going to get home?
A. Well, my friend who drove me there had left and she offered to ride me home.
Q. And where did she live in relation to you?
A. Less than two blocks away.
Q. Did the two of you then get up to leave the bar?
A. Yes.
Q. Do you recall what exit you used to leave the bar?
A. The rear exit.
Q. Now, can you describe for us that rear exit that the two of you used in leaving the bar at about 9:15, 9:20?
A. It's at the far end of the bar.

There's an exit that brings you out to the rear of the building, the parking area of the building.

Q. Was there an indication by Gloria that it was in that rear lot that her car was parked?

A. Yes.

Q. Did the two of you walk through the rear door together?

A. Yes.

Q. Can you describe for us the kind of lighting that existed as you walked out the door and then as you would get into the parking lot?

A. The Greenhouse has an outside deck on the second floor which extends over that exit, so that when you first leave the building it's a dark area because you're under this deck. And for say eight, 10 feet it's kind of dark under there. And then you -- when you continue, you are out from underneath the deck. And you are in the bright lights of the parking area.

Q. You have described the bright lights of the parking area. Can you be a little more

descriptive? Like how bright?
A. Like daylight.
Q. Mr. Sullivan, I am going to show you a photograph that has been marked as S-17 for identification. I would like you to look at the photograph and tell me if you recognize what is depicted there.
A. Yes.
Q. What do you recognize as being depicted there?
A. The back exit of the Greenhouse building.
Q. Is the exit that you've described that brings you out under the deck shown on that photograph?
A. Yes.
Q. And is that the one that's by the pay phone there?
A. Yes.
Q. Is the deck that you walk under also depicted?
A. Yes.
Q. And the open area of the parking lot?
A. Yes.
Q. And is it when you get to the open

area of the parking lot that you described it as bright as daylight?

A. Yes.

Q. Thank you. Did you and Gloria walk out of the parking lot together?

A. Yes.

Q. Were you side by side?

A. Yes.

Q. How close were you to Gloria as the two of you emerged into the lit portion of the parking lot from under the deck?

A. Six inches.

Q. I want you to tell the jury what happened as the two of you emerged into the lit portion of the parking lot side by side with Gloria.

A. As we got into the lit portion, a man appeared from behind the back of Gloria's car, aimed and fired a gun at us.

Q. Were you able to see the man emerge from the back end of Gloria's car?

A. Yes.

Q. Were you able to see the gun in his hand?

A. Yes.

Q. I have a photograph that has been marked as S-22 for identification. I would like you to look at it and first tell us whether you recognize what is depicted in the photograph?
A. Yes.
Q. What do you recognize as being depicted there?
A. Gloria's car.
Q. Is it from the back end of that car that you saw the gunman emerge?
A. Yes.
Q. I want you to tell us, as best you can remember, exactly what that gunman did as you saw him emerge from the back end of Gloria's car.
A. Started shooting.
Q. Where was the gun when you first saw it?
A. In his hand.
Q. And where was his hand when you first saw it and the gun?
A. Approximately chest level.
Q. Chest level?
A. Yeah.

Q. Was it in a bent position or a straight-armed position?
A. Straight armed.
Q. And was the gun being held by the right hand?
A. Yes.
Q. Was it pointed in the direction of you and Gloria?
A. Yes.
Q. Did you hear the gun go off?
A. Yes.
Q. Did you see anything?
A. I saw the gun go off.
Q. What do you mean you saw the gun go off?
A. I saw a gun emit a small flame -- whatever, whatever a gun does.
Q. At the time that you saw the man, the arm, the gun and heard the gun go off, how far was that man from you and Gloria?
A. About 10 or 12 feet.
Q. Mr. Sullivan, I'm going to start back here and I want you to stop me when I get as close to you as the gunman was with the gun pointed at you and Gloria.

A. About there. That's good.
THE COURT: Hold up a second.
I make it seven tiles, approximately two feet each, about 14 feet.
MR. DAVIS: That's correct, your Honor.
BY MR. TALASNIK:
Q. From that distance, could you see the man who shot at you?
A. Yes.
Q. Were you able to give his description to the police later that night?
A. Yes.
Q. After the first shot was fired, what did you do?
A. Went down, hit the ground.
Q. Face forward or back?
A. Face forward.
Q. Could you tell what Gloria did?
A. No.
Q. Was there any more shooting?
A. Two more shots.
Q. Do you recall specifically two more shots?
A. Yes.

Q. What were you doing while these other two shots were being fired?
A. Laying down.
Q. Face down?
A. Face down.
Q. After the third shot, what did you do?
A. After the third shot, I heard footsteps and looked up and saw him running away.
Q. Are you able to describe the man who shot at you and the man who you saw running away?
A. Yes.
Q. Can you describe him for us now?
A. White, approximately 5'10", medium build, light featured, had a painter's cap on and light colored clothing.
Q. Could you tell in which direction he fled?
A. Yes.
Q. Where?
A. He fled towards the Longport side of the Greenhouse. I don't know which direction that is. South, I guess.
Q. At or about the time of this flight,

did you hear any cars?
A. No.
Q. What did you do after you saw the man flee?
A. I went to help Gloria.
Q. Tell the jury what you found.
A. I found her to be shot.
Q. Describe her condition.
A. Bullet wounds in the chest area.
Q. Was Gloria able to speak?
A. No.
Q. What did you do with Gloria?
A. I took off my coat and put my coat underneath her head and tried to talk to her, but there was no response.
Q. Did others come out from the bar?
A. One person came out from the bar.
Q. Do you recall if it was a man or woman?
A. It was a woman.
Q. Did the police then come?
A. Yes.
Q. Do you know how long it took?
A. Two or three minutes.
Q. During this time, you're supporting

Gloria?

A. Yes.

Q. And talking to her?

A. Yes.

Q. But she's not able to respond?

A. No.

Q. Did you move Gloria?

A. No.

Q. So she was still there being supported by you when the police arrived?

A. Yes.

Q. Is the shooter in the courtroom?

A. Yes.

Q. Can you identify him?

A. Yes.

Q. Would you point him out?

A. Sitting in the white shirt with the dark tie at the other table.

MR. TALASNIK: No further questions.

THE COURT: The record will reflect that the witness was looking at the defendant.

You may cross-examine.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Sullivan, you indicated you had

been in the Greenhouse for a few hours with Gloria.

A. Yes.

Q. And there came a time for you to exit or leave. Is that true?

A. I don't know what the question is.

Q. There came a time when you and Gloria left?

A. Yes.

Q. And you indicated that as you walked out, you were under a porch or outside porch and it was rather dark under there. Now, even though it may have been slightly darkened under the porch area as you exited, did you have a clear view of the parking lot from the back door?

A. Yes.

Q. Okay. As you initially came out, who came out the door first?

A. Gloria came out the door first.

Q. And I assume you came out behind her?

A. Yes.

Q. And I would assume within a few steps you caught up and started walking abreast of Gloria?

A. Yes.
Q. And you were walking in the direction of her automobile?
A. Yes.
Q. As you made these first two or three steps, did you see anything in the parking lot?
A. No.
Q. Okay. And as you entered the lit area of the parking lot, which you indicated was like broad daylight, when did you first notice Mr. Highlander?
A. As soon as we were in the light.
Q. As soon as you were in the light. Okay.

Now, at the moment that you initially saw Mr. Highlander, did you hear him emit any words?
A. No.
Q. Did you hear him say anything to Gloria?
A. No.
Q. You indicated 14 foot. You were close enough to hear him if he said something?
A. Absolutely.

Q. You have no hearing problem?
A. Absolutely not.
Q. And at that point I think you indicated to Mr. Talasnik that you were going maybe abreast maybe six inches apart?
A. Correct.
Q. Now, was there anything said to you, Mr. Sullivan?
A. No.
Q. By Mr. Highlander that is.
A. No.
Q. Did you hear Gloria say anything?
A. No.
Q. And were you close enough to Gloria to hear her if she had spoken?
A. Yes.
Q. Now, at that point you say he raised his gun?
A. Yes.
Q. And he fired?
A. Yes.
Q. Now, was he directing that weapon at Gloria?
A. I don't know who he was directing it at. He was directing it at both of us.

Q. Let me put it this way. When a man points a gun, was he waving it or was it pointed in one direction?
A. Pointed in one direction.
Q. And you indicated that at the moment that you saw him pointing that gun with his hand and you indicated you saw fire or whatever a pistol emits when it is fired, you saw that?
A. Yes.
Q. Okay?
A. Yes.
Q. And when you saw that fire --
A. Yes?
Q. -- is that when Gloria was struck?
A. I believe so, yes.
Q. And obviously the gun was pointed at Gloria when he pulled the trigger?
A. Yes.
Q. Because she was the one that was struck.
A. Yes.
Q. Okay. And at that point you indicated, Mr. Sullivan, that you went to the ground.

A. Yes.
Q. And what happened after that you have no knowledge in terms of the gunshots?
A. Other than the fact that two more gunshots were fired, you know. I have full recollection of two more shots being fired.
Q. Maybe it wasn't a very good question. You don't have any knowledge of in which direction these gunshots were fired?
A. No. I just know they were fired.
Q. Were you hit?
A. No.

MR. DAVIS: That's all.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Nothing further.

THE COURT: You may step down, Mr. Sullivan, thank you very much.

(Witness excused)

THE COURT: Ladies and gentlemen, we will take a brief recess at this point.

(Whereupon, the jury leaves the courtroom)

THE COURT: Five minutes.

(Brief recess)

THE COURT: Who is next, Mr.

Talasnik?

MR. TALASNIK: Russell Hendricks.

(Jury enters the courtroom)

THE COURT: Mr. Talasnik?

MR. TALASNIK: Thank you, your Honor.

The State calls Russell Hendricks.

RUSSELL D. HENDRICKS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. TALASNIK:

Q. Where do you live, Mr. Hendricks?

A. Ocean City.

Q. What kind of work do you do?

A. I have my own business on the boardwalk.

Q. Mr. Hendricks, are you familiar with a location in Margate known as the Greenhouse Bar and Restaurant?

A. Yes, I am.

Q. Have you ever been there before?

A. Yes.

Q. How frequently do you go there?

A. Twice a week.

Q. I want to refer you specifically to a

Monday evening, the 25th of April, 1988. Do you recall being at the Greenhouse that evening?

A. Yes, I do.

Q. Do you remember about what time you arrived?

A. Between 9:00 and 10:00.

Q. Was it a busy night there?

A. Not really, no.

Q. What was your purpose in going there?

A. Just to go get something to eat and have a couple of drinks.

Q. Did you notice people at the bar and at the tables?

A. Yes, I did.

Q. Did there come a time when you noticed a man and woman leaving the bar sometime after 9:00?

A. Yeah, I did.

Q. Would you tell us what you remember about that?

A. I remember a girl going into the bathroom, coming back out to where she was sitting and leaving with a man.

Q. Do you know what door they left by?

A. The door -- I would say it's the back door on the beach side.
Q. Okay. And when you go through that back door towards the beach side, where are you in relation to the parking lot?
A. You walk out, take a left and the parking lot is right there.
Q. After those people left, tell us what you heard.
A. After they left, I heard something -- it was a noise, three pops. I said to the person to me, I said to me it sounds like the kids working in my kitchen banging plastic bags, like a popping sound. Then I heard a person screaming in the kitchen, they shot her. That was all I heard.
Q. In response to that, what did you do?
A. I got up a few minutes later and looked out and went out the door with the bartender.
Q. What did you see?
A. I saw a girl laying unconscious on the ground.
Q. Was there a fellow with her?
A. Yes, there was.

Q. How soon after that did the police arrive?
A. They may have been there right at that time.
Q. So that would have been moments after the three pops?
A. Yeah. Maybe five minutes maximum.
Q. As best you can remember, there were three of them?
A. Yes.
MR. TALASNIK: Thank you, no further questions.
THE COURT: Cross-examine?
MR. DAVIS: No cross-examination.
THE COURT: You may step down. Thank you, Mr. Hendricks.
(Witness excused)
MR. TALASNIK: The State calls Tania Martin.
TANIA LYNN MARTIN, having been duly sworn, was examined and testified as follows:
THE COURT: Ms. Martin, please be good enough to sit forward and use the mike so we can all hear you.
DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Ms. Martin, where do you live?

A. Brigantine.

Q. How long have you lived in that area?

A. Since November of '87.

Q. What kind of work do you do?

A. Right now I'm in an accounting department.

Q. I want you to think back to the spring of 1988. Where were you working back then?

A. At Ventura's Greenhouse.

Q. Where is that?

A. It's in Margate.

Q. How long did you work at Ventura's Greenhouse?

A. I probably worked there about five or six months.

Q. And would those five or six months included the month of April 1988?

A. Yes, sir.

Q. What kind of job did you have at the Greenhouse back in April of 1988?

A. I was a waitress.

Q. What sorts of things did you do when there weren't tables to wait on?

A. I do side work like cleaning up and making popcorn or pizza boxes for the next shift or the day time shift.
Q. Could you describe for us how the Greenhouse is laid out with respect to any attached parking garage or parking lot?
A. They've got parking on the side, like if you're coming up to the -- from the big street, Atlantic or Pacific -- I'm not sure of the name of the street, the one that runs right in front of it and then they've got parking there and parking in the back and the pizza business is located in the back, right off the back parking lot.
Q. When you say they've got a parking lot, in the back parking lot, would that be closer to the beach than the restaurant itself?
A. Yes, sir.
Q. So it is between the beach and the back door to the restaurant?
A. Yes, sir.
Q. Do you remember working there on the evening of Monday, April 25, 1988?
A. Yes, sir.

Q. Do you remember about what time you got to work?
A. Well, I usually get there like 7 o'clock, but I know I was late that day because Louie got mad at me.
Q. Who is that?
A. Louie Ventura.
Q. He's the owner?
A. Huh-huh.
Q. What time did you get there that night?
A. It was before eight o'clock, probably like 45 minutes late because I had to ride on the next bus.
Q. So sometime before eight o'clock that night you got to the Greenhouse?
A. Just before 8:00.
Q. When you got there at just before eight o'clock, was it already dark?
A. I don't believe so. I don't really think so. I don't think so.
Q. This parking lot that you told us about that is kind of in the back between the back door and towards the beach, are there lights there?

A. I don't know for sure.
Q. Well, when you would leave work at the end of your shift and go into the parking lot, are you able to find a car?
A. Oh, yeah.
Q. Was it a busy night at the Greenhouse?
A. No. It was real slow.
Q. And when it's real slow on a night like that, what would you do?
A. Well, make pizza boxes.
Q. Whereabouts do you stand when you're making pizza boxes?
A. Well, they have a big long table right by the pizza -- the pizza kitchen has a place to stick them out there by the cash register and they have a long table, the longest table there sits like six people, and I would sit there and make the boxes.
Q. Is the location where you would sit anywhere near a door?
A. Where I would sit, it's right next to the door. The only thing separating it would be the cash register and the bar.
Q. From where you would sit near that door and by the cash register, are you able to

see out into the parking lot?
A. You can see out the windows there, but I was standing up part of the time because I got tired of making the boxes.
Q. I've got a couple of pictures here that I want you to look at. They have been marked as S-19 and S-20 for identification.
First I want you to look at S-19 and tell me if you recognize what is depicted in that photograph.
A. Yeah. That's me.
Q. What is it that's generally shown in the photograph?
A. The door, the parking lot and where I was -- the bar I was just talking about, the cash register.
Q. From where this picture is taken, can you see from the parking lot through the door that you've described to where you were standing?
A. Yes, sir.
Q. And do you even appear in that picture?
A. Yes, sir.
Q. Is that approximately where you were

standing when all this other stuff happened?
A. Yes, sir.
Q. I want to show you another picture that has been marked as S-20 for identification and ask you the same sorts of things. Do you recognize what is in that picture?
A. Yes, sir.
Q. Is it essentially the same but a slightly different angle?
A. Yeah. Just a little bit of a different angle.
Q. And, again, is that you we see in that open doorway there?
A. Yes, sir.
Q. You got to work about quarter to 8:00. I want you to think forward that same evening, Monday night the 25th of April, to sometime around nine o'clock. Did you have occasion to be standing by that open doorway when something happened?
A. That night there was -- I hadn't made any tips at all about the time I left that night because Monday nights are the slowest nights they have, so there was maybe like one

or two people came in and sat at the tables. Most of the people sat around the bar and talked, you know, to Gail, the bartender. If I had any customers that night, it was very few.

Q. Okay.

A. So I just did all my side work and looked out the door.

Q. Did that side work include standing by the open doorway near the cash register you've described for us?

A. No. I was just standing there looking out.

Q. Were you just standing there looking out?

A. Yeah.

Q. Did something happen that you were able to see from that position?

A. Yes, sir.

Q. I want you to tell us what it is that you saw looking out that open doorway into the parking lot.

A. Well, I was looking out there and I heard some -- sounded like firecrackers. One firecracker and I was just daydreaming and I

looked up and this girl, dark hair, and then a guy that was just in here was walking out and then I seen this gentleman over here went out from like it was from a black car, all I could see was the end of the car because the wall started there, and I just seen that girl get shot.

Q. You said that you could see the end of a dark car?

A. I believe it was black. It was like one of the things that first came to my attention because that was really the first real movement I seen because I didn't see those -- I didn't pay attention to the people walking out from under the porch or even them walking out of the restaurant itself. I was just minding my own business, I guess.

Q. I'm going to show you a picture that has a marking on it, S-22 for identification. Does that picture -- is there anything in that picture that you recognize?

A. That's the end of the car, I imagine. That's the last parking place you would be able to see from the door, so you could see from about that much of the car sticking out

from where I was standing.
Q. Does that appear --
THE COURT: You could see what?
THE WITNESS: You can just see the rear end of the car.
THE COURT: The witness is pointing to a place in the car -- let me see the picture -- indicating the left rear wheel of the vehicle.
BY MR. TALASNIK:
Q. Now, the thing that drew your attention to that parking lot was this firecracker sound?
A. The thing that drew my attention to the car was the man coming out from behind it.
Q. I want you to imagine that this table here is the car.
Now, when you say someone came out from behind it, were they already upright or were they down and they emerged like that?
A. I believe they were upright and moving.
Q. They were upright and moving?
A. They were moving.
Q. In which direction was he moving?

A. Towards the patio, towards that lady.
Q. Towards the lady?
A. And the man.
Q. And the man. Were the lady and the man together?
A. They were walking out the parking lot together, yes.
Q. Did you see whether the man who was emerging from the dark car and walking towards the man and the lady, did you see if he had anything in his hand?
A. Yeah.
Q. What did you see in his hand?
A. A gun.
Q. What did you see him do with that gun?
A. Shoot that lady.
Q. Can you tell us about how far away the man was from the lady when he shot her?
A. I don't know. I don't know about the first shot because I didn't see him. The second one, he was probably about the distance that you are from me right now. But by the time he shot her the second time, he was a lot closer to her.
THE COURT: All right. Can I have

the answer read back, please.

(Whereupon, the reporter read the previous answer)

MR. TALASNIK: I'll back up and try to clarify.

THE COURT: For the record, the reference to where you are at this point by the same measurement, Mr. Davis, appears to be 12 feet.

MR. DAVIS: Yes, Judge.

THE COURT: You may proceed.

BY MR. TALASNIK:

Q. So I understand, Tania, when you first saw the man with the gun, he was about this far away from the lady?

A. The first time that I heard a shot and then I looked up and he was coming from behind the car and they were just coming out from under that porch, the overhang at the other end of the stairs, maybe just a little farther than where you are -- from where they first came out and I heard the shot and I couldn't see him until until it brought my attention when I looked over to where it came from, it was probably this far and then when I seen him

and the second one was done, the one that hit her, then he was like maybe right there. And closer with the other time.

Q. This shot is the one that you saw? You saw the shot when he was this far away?

A. Yeah.

THE COURT: Indicating now approximately eight to 10 feet.

Q. Was his arm raised?

A. Yes.

Q. Was the gun in his hand?

A. Yes, sir.

Q. Did you hear the gun go off?

A. Yes, sir.

Q. Did you see a flash?

A. I didn't pay any attention to a flash.

Q. How did you see the girl, the dark-haired girl react?

A. She went backwards and she just kind of -- she held her hands up and the guy that was just here like caught her when she went to fall backwards and then --

Q. Then what did you see the man with the gun do?

A. He ran right up on top of her and shot

her again.
Q. He went right up on top of her and shot her again? Was she already down?
A. Yeah. She was down. The man had caught her. She never really hit the ground. She was in a different place than you all had outlined in those pictures.
Q. She had fallen backwards and was caught by the man who was in here?
A. Yeah.
Q. Was she in that position when the shooter came up on top of her?
A. Yes.
Q. Did you see him shoot her again?
A. Yes, sir.
Q. How far was he from her when he shot her again?
A. Maybe this far.
THE COURT: Indicating approximately five feet.
Q. After that, what did you next see or hear?
A. Well, I started screaming that he was shooting her, because nobody was paying any attention to it, you know? And I like made

eye contact or something with that man and I went running out and he ran off towards that elephant and I went out the same door that that lady had went out and that's all.

Q. When you say he ran towards the elephant, who is the he that ran towards the elephant?

A. The man with the gun.

Q. The man with the gun. When you got out to the parking lot, did you see the girl that had been shot? Did you see the man who was with her?

A. Yeah.

Q. In what positions were they when you got out to the lot?

A. Like in those pictures that you showed me where -- where you have it outlined, that's where I told him to lay her down because he was like trying to move her, get her out of there or something because I didn't know what was going on, you know. I didn't understand why he was moving her around like that. I just kept yelling at him to lay her down, lay her down, you know. And so he laid her down.

Q. Did you see her?

A. Yes.
Q. Did you see any injuries on her?
A. Yeah.
Q. Tell us what you saw.
A. There was just like a little spot of blood over here.
THE COURT: I can't hear you.
THE WITNESS: There was a little spot of blood right here.
THE COURT: Indicating the left area of the chest.
BY MR. TALASNIK:
Q. Was she saying anything?
A. She just made a real wierd noise.
Q. What do you mean she made a wierd noise?
A. I can't describe it. It was just --
Q. Was it words or a sound?
A. It was a sound.
Q. Did she do anything else? Did she move?
A. Her eyes just rolled up and rolled back and she made that sound and her eyes came back down and they just stayed like that.
Q. I'm sorry. And they just stayed like

that?

THE COURT: Yes.

Q. Did the police then come?

A. Shortly thereafter.

Q. Was it within moments?

A. Then just a few minutes. I don't know exactly how long. Everything kind of happened really fast.

MR. TALASNIK: No further questions, thank you, your Honor.

THE COURT: Mr. Davis?

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Ms. Martin, you indicated before you saw this situation, you were more or less daydreaming then looking out the back door and looking at nothing?

A. Yes, sir.

Q. And what brought your attention to this situation was that you heard what you learned -- later learned to believe was a shot?

A. Yes, sir.

Q. Now, when you heard the shot, had you seen the two people at that time?

A. I hadn't paid any attention to them.
Q. So you actually hadn't noticed them leaving the premisis?
A. No, sir.
Q. And this man that you said you saw by the -- by this black car, had you seen him before you heard this shot?
A. No, sir.
Q. Now, when you heard the shot, what did you do? Look up in the direction of the shot? What did you do?
A. I was already looking out there.
Q. Okay.
A. But it like brought me -- you know how you daydream? It snapped me back in, you know, to what was going on around me, I guess, made me aware of everything as I wasn't before.
Q. And then when you were snapped back to reality, you became aware of what was around you, you didn't see the front of Ms. Simonelli, did you?
A. Of who?
Q. The lady that was later shot, Gloria Simonelli?

A. Could you say that again?
Q. Her name was Gloria Simonelli. Did you see the front of her after she was shot or the first shot?
A. Could I see the front of her? She was walking out from underneath the porch at that time.
Q. Could you see the front of her where you --
A. I could see her from the side.
Q. From the side. So, if, in fact, she had been wounded in front from that first shot, you couldn't tell?
A. I don't believe she was hit the first time.
Q. How many shots did you hear all together?
A. I believe I heard three.
Q. You believe you heard three. And you say -- okay. Now, the later two shots or the last two shots that you heard, did you see in which direction that they were fired?
A. They were fired in the direction of the lady.
Q. They were fired in the direction of

the lady. Now, when you heard the first shot, the gentleman that you saw walking with the lady, did you see him react in any fashion?

A. They both just kind of coward, you know, and tried to get out of the way, I thought. They just moved.

Q. Did you ever see the gentleman hit the ground?

A. No, sir.

Q. Just after the shot, he just dove to the ground?

A. I don't recall that.

Q. You don't recall that.

A. No.

Q. And -- well, when you heard the second shot, where was the gentleman, as you recall it?

A. Right by the stairs.

Q. Right by the stairs? Was he standing up, crouching, running? What was he doing?

A. I believe him to have been standing by that -- by the lady or, you know -- I know when she went back, he was there.

Q. Say that again. I didn't hear that.

A. I believed when she -- when I heard

the second shot, I seen her go back. I don't know if she was shot then or if she just went scared and went backwards, but to the best of my knowledge he was there.

Q. You're talking about the man with her?

A. Yeah.

Q. When you say there, there to do what?

A. As to right there next to her.

Q. He was right next to her. You indicated to the prosecutor that somewhere along the line he caught her after she had been shot?

A. That's what I believe.

Q. When you say that's what you believe, did you actually see this or --

A. Yes, I seen it.

Q. So when she was shot, as you indicated by the second shot, what did the gentleman do?

A. He caught her.

Q. He caught her?

A. The thing I remember the most was when all the shooting was over was that he had a hold of her, like under her arms from the back and he was moving her, you know?

Q. There was no question when it was all

over he was cradling her in his arms --
A. I don't know if you call it cradling her. He was moving her around.
Q. He had her in his arms.
A. Yes.
Q. But the question is, before the last shot and before the assailant left, isn't it a fact that the gentleman was prone on the ground, facing the ground?
A. That's not the way I recall it.
Q. That's not the way you recall it. But you do recall all shots that you saw being directed towards the woman.
A. Yes, sir.
Q. Now, did you give a description of this assailant to the police department?
A. I gave a description to them, yes.
Q. What description did you give?
A. That he had light hair, light colored clothes and I don't recall -- I don't recall if he had any facial hair or anything. I recall his eyes being large.
Q. Eyes being large?
A. Yeah, but I figured --
Q. I'm sorry?

A. I figured because he was afraid.
Q. Did you describe his hair to the police, the amount of hair and all that he had?
A. No.
Q. Didn't you describe it as a lot of hair on his head?
A. I don't recall.
Q. Do you recall indicating whether or not this assailant had a hat on?
A. He did not have a hat on.
Q. He did not have a hat on. And do you know approximately how tall he was or his age?
A. No, sir.
Q. And did the police talk to you that evening of this incident?
A. Yes, sir.
Q. And did they ask you to make any identification of any pictures?
A. Yes, sir.
Q. And were you able to identify anyone?
A. I believe so.
Q. Pardon me?
A. I believe so.
Q. You did or you did not?

A. I did.
Q. And who did you identify?
A. The picture was different, but it looks a lot like him.
Q. Looks a lot like him?
A. Yes.
Q. Do you know if this is the man you saw?
THE COURT: Indicating the defendant.
A. That's the man I seen in the parking lot, yes.
Q. Now, after the incident, how long after the incident did you leave -- how long after the incident did you exit the building?
A. With the police?
Q. Yes.
A. Or --
Q. No. After you saw what you saw, when did you leave the building to come outside?
A. To check on the lady?
Q. Yes.
A. Right immediately. As soon as --
Q. Is that parking lot well lit?
A. They have flood lights out there, yes.

Q. And is it easy for anyone -- is it easy for the patrons near the windows to see the complete parking lot area?
A. Yes, sir.
Q. No problem for you to see what was going on?
A. Most of it took place right there next to the porch, so not only did it have the flood lights, it had the light from the kitchen.
Q. How close would you say that would be to the building, the building itself?
A. How far what is from the building?
Q. Where the shooting took place.
A. Right next to it.
Q. Right next to it?
A. Like the sidewalk for the deck above it is maybe like four foot wide, so that there, they were just out from under the porch cover in there, so maybe that far from the building, but no more.
Q. Now, were the windows open or anything that night or the door?
A. The door and the windows were open.
Q. Did you hear any words being uttered?

A. No, sir.

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

THE COURT: Mr. Talasnik?

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

THE COURT: You may step down, Ms. Martin. Thank you very much for coming.

(Witness excused)

THE COURT: Mr. Talasnik.

MR. TALASNIK: Thank you.

State calls Patrolman Oaks.

JOHN C. OAKS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Officer, would you tell us where you are employed?

A. Margate Police Department, New Jersey.

Q. How long have you been employed with the Margate Police Department?

A. Approximately three-and-a-half years.

Q. Are you familiar with a location known as the Ventura's Greenhouse?

A. Yes, I am.

Q. Is that a location within the jurisdiction of your local police department?
A. Yes, it is.
Q. I want to direct your attention to the evening of Monday, the 25th of April, 1988, and ask whether you were on duty that night.
A. Yes, I was.
Q. Did you receive a dispatch to go to the location of Ventura's Greenhouse?
A. Yes, I did.
Q. Where were you when you got that dispatch?
A. At the time of the dispatch, I was turning off Ventnor Avenue onto South Washington Avenue towards Atlantic.
Q. How far would that be from the location of Ventura's Greenhouse?
A. At the time of the dispatch, I was approximately two blocks away from the Greenhouse.
Q. Do you know about what time you received the dispatch to go to that location?
A. Approximately 9:20 p.m.
Q. Was it already dark out?
A. Yes, it was.

Q. Were you the first officer to arrive at the scene pursuant to the dispatch?
A. Myself and my partner that night, Officer Hopkins.
Q. What was the nature of the dispatch that caused you to go there?
A. We were dispatched on a report of shots fired, somebody being shot.
Q. When you arrived at the Greenhouse, from what streets did you approach?
A. As we were coming up South Washington towards Atlantic, we came up to the corner of Atlantic and South Washington, took a left towards the Greenhouse, which is taking a left off South Washington and you would be going towards Atlantic City. From that time, we went towards the Greenhouse, took a right on on South Decator Avenue, which is boardered by Lucy the Elephant and the Greenhouse, and at that time we saw people in the back parking lot waving us back to that area.
Q. By back parking lot, can you describe where that parking lot is in relation to the rear of the restaurant and the boardwalk or beach?

A. The Greenhouse is on the beach side of Atlantic Avenue. There is a large lawn, building itself, then there is a rear parking lot you have to turn down South Decator Avenue and take a left just behind the Greenhouse so it is the Greenhouse parking lot and then another condo before you get to the beach.

Q. So the parking lot would be roughly between the back of the Greenhouse and the beach?

A. Yes.

Q. Is it a well lit area, that parking lot?

A. No.

Q. Do you have any difficulty seeing there at night?

A. You can see, but it is not well lit.

Q. Tell us what you found when you got there?

A. We approached the woman. She had what appeared to be blood spots on her chest off to the right approximately four inches in diameter, quick went down to check her out, tried her throat, felt nothing. We had a flashlight, her eyes were turned up and they

were fixed and she wasn't breathing.
Q. What was the condition of the fellow that was holding her or supporting her?
A. He was near hysterical. He was just screaming, help her, help her. Couldn't get any information out at all.
Q. Okay. What did you then do?
A. At that time, as I was down there, another male came out from the crowd and gave me a quick description of a man he said ran from the scene. At that time Officer Hopkins went with the victim and I followed the directions of the flight that was pointed to.
Q. Did you find anything along the direction of flight that you had been given by one of the people at the bar?
A. No, I didn't.
Q. Did you then return to the location of the victim?
A. Yes.
Q. Was she in the same condition that she was when you first arrived?
A. Yes.
Q. Were arrangements made for an ambulance?

A. Yes. The dispatcher just after dispatching us dispatched an ambulance. As I was approaching the scene from coming back where I checked, the ambulance was coming crossing Atlantic up South Decator.

Q. How long after your arrival did the ambulance arrive?

A. I would have to say approximately two to three minutes.

Q. Was the scene secured during that period of time?

A. At that time it was only myself and Officer Hopkins. Officer Hopkins stayed with the victim and at the time the ambulance showed up or sometime just prior to that Sergeant Green also showed up and they were in the process of securing the scene.

Q. Between the time of your first arrival at the scene and the time of your leaving the scene with the victim, was the scene altered in any way?

A. Not that I could say.

Q. What did you do after the ambulance arrived?

A. The ambulance arrived, got a stretcher

out, they just took a quick check of her, loaded her right away and because there are only two ambulance drivers and both were needed in the situation, they needed one of us to drive. Sergeant Green and Officer Hopkins were securing the scene, so I was detailed to drive the ambulance.

Q. Would you describe that process for us?

A. What process is that?

Q. What happened with respect to the ambulance and the victim and where you went?

A. They loaded the victim in the back of the ambulance. I believe EMT Harry Scull began CPR and at that time Medigate out of the Shore Memorial was on the air requesting a meeting place between the scene and Shore Memorial so they could stop and put one of their own technicians in to see what the situation was before we arrived. The meeting place was designated at Grillo's Electric, which is located at the base of Longport Bridge, has a large parking lot which would accommodate both vehicles. We stopped there, Medigate was right there as soon as we pulled

in, one of their technicians got out and told us to proceed and he stayed with us and we drove directly to Shore Memorial Hospital.

Q. Did you remain with the victim the entire time she was in the ambulance?

A. Yes, I did.

Q. What was being done in the ambulance?

A. As far as I could tell, they were trying to place IV's and continuing CPR.

Q. Did you accompany the victim into the emergency room of the hospital?

A. Yes, I did.

Q. During any of the time that she was at the scene, before she was placed in the ambulance, did the victim ever regain consciousness?

A. Not that I could tell, no.

Q. During any of the time that she was in the ambulance on the way to the emergency room, did she ever?

A. No signs of consciousness, no sounds, nothing.

Q. Did you remain in the hospital while the victim was being tended to in the emergency room?

A. Yes, I did.
Q. And could you tell that there were technicians working on her in the emergency room?
A. Yes. They tried several different methods which I couldn't testify to, but they tried several different ways to revive her.
Q. At some point, were you advised that these various measures were unsuccessful?
A. Yes, I was.
Q. How were you advised?
A. The physician in charge of the emergency room at that time was working on her looked up at the clock, called all his assistants off and said that's it. Time of death, I believe, was 10:31.
Q. What was done with the victim's belongings at that point?
A. Her clothing was pretty much cut up throughout the time she was in the emergency room by what they were trying to do to her and after time of death was pronounced, she was unclothed on the table and at that time I secured her belongings.
Q. Do you recall what she was wearing?

A. Clothing, she I believe had a white blouse stripe shirt, blue denim skirt and dark jacket.

Q. Now, what would be done with this clothing in terms of preserving it once it was turned over to you?

A. The medical examiner's office arrives and they will place it in bags and from there it is either directly to the prosecutor's office or to us.

Q. Did you maintain custody of the clothing until the medical examiner's arrival?

A. Yes.

Q. Officer, I'm going to show you an item that has earlier been marked as S-13 for identification. I want you to look at the item and tell me if you recognize what it is.

A. It appears to be the jacket -- I couldn't say right now if that was the jacket right now or not that she was wearing. It does resemble the jacket, yes.

Q. Now, in what condition was it when you accepted it?

A. That condition.

Q. Without --

MR. DAVIS: Objection. He hasn't actually identified it.

THE COURT: That's correct, Mr. Davis, but I don't see anything to object to. He's described the condition on a comparison basis.

A. The condition that I accepted it in -- turn it around. I saw the hole in the shoulder and that was -- there was a hole in the shoulder that night.

THE COURT: The witness is pointing to the right rear shoulder area of the jacket, Mr. Davis.

BY MR. TALASNIK:

Q. At the time that you accepted it, had it been cut open in the process of attempting to revive Gloria?

A. Not that way, no. I believe the jacket was removed and they cut her blouse.

Q. Officer, did you remain with the victim until the medical examiner arrived?

A. Yes, I did.

Q. And did you remain for the performance of an autopsy?

A. Yes, I did.

Q. Officer, what is an autopsy?
A. An autopsy is a technique used by the medical examiner to determine the cause of death and any other factors, the type of -- to simplify it, an operation on a corpse.
Q. Did you remain on that procedure?
A. Yes.
Q. Who performed that procedure?
A. Dr. Jason of the Atlantic County Medical Examiners.
Q. Would you physically be in the room as the autopsy is being performed?
A. Yes.
Q. As Dr. Jason performs the autopsy, is he describing what he finds?
A. Yes. He shows -- he's speaking into a microphone himself, but then he will speak so everyone in the room can hear him.
Q. At any time prior to the performance of the autopsy, did you learn the identity of the deceased?
A. Yes, I did.
Q. Who did you learn her to be?
A. Gloria Simonelli.
Q. Did that name mean anything to you?

A. Yes, it did.
Q. Had you been involved in another investigation involving that same young woman?
A. Yes, I was.
Q. Tell us about that.
A. Approximately a week earlier, we received a call from a woman stating that her door had been vandalized, a window possibly kicked in. Myself and Officer Hopkins again arrived and Gloria Simonelli was standing in front of her apartment, I believe 100 North Monroe Avenue, Apartment E. She was very upset, almost hysterical at the time. We had to calm her down. She kept on saying that it was him --

MR. DAVIS: I object, your Honor.

MR. TALASNIK: Your Honor, it's being offered under evidence rule --

THE COURT: Let me see counsel.

(Whereupon, the following side bar discussion took place)

THE COURT: First of all, what's the proffer?

MR. TALASNIK: It's --

THE COURT: What is he going to say

that she said?

MR. TALASNIK: Word for word, I'm not sure.

THE COURT: What is the essence of it?

MR. TALASNIK: That she's sure it was him, probably some reference to the restraining order.

THE COURT: What's the purpose for the proffer?

MR. TALASNIK: Well, there -- there has been evidence offered throughout under Rule 55 to show motive, to show bias, to show intent and to identify this defendant as the one who committed the homicide. The conduct was admitted to by Mr. Highlander through the testimony of Mr. Brooks and, I believe, Mr. Reed.

The victim's parents testified that the incident was, in fact, reported to the police and they were cross-examined about whether a complaint was signed, so this information in addition to having relevance under Rule 55 corroborates the testimony of the victim's parents with respect to its

reporting under Rule 20.

THE COURT: I will permit the testimony of this witness to the effect that she made a complaint and whether or not she signed the complaint. I won't permit him to testify as to statements that she made as to who she thought might have done it.

MR. TALASNIK: Very well.

THE COURT: Given there is already evidence to the effect that she indicated she didn't see him do it.

MR. TALASNIK: I think that will come through this Officer if I can be allowed to question him.

THE COURT: Well, it is one thing for him to quote her, but for him to quote her as saying it was Highlander, it is that latter that I think is appropriately objectionable.

MR. TALASNIK: I will try to reconstruct the question, Judge.

(Whereupon, the side bar discussion ended).

BY MR. TALASNIK:

Q. Officer, with reference to this incident, approximately what time of the day

or evening were you summoned to Ms. Simonelli's Monroe Avenue condo?

A. It was approximately 11:35 at night, p.m.

Q. At the time of your arrival, was she there?

A. Yes.

Q. What was her emotional state at the time she confronted you there?

A. She was very upset.

Q. Was there any evidence of any damage to her door?

A. Yes. There -- she had a door which was full length Plexiglas with false frames put into it and some of the frames were knocked out.

Q. Did you speak to her about what had occurred?

A. Yes.

Q. As a result of that conversation, was anyone ultimately charged with that damage?

A. No. Because she at the time did not actually see whoever did the damage.

Q. Okay. And this was the same Gloria Simonelli that you saw at the parking lot of

the Greenhouse on the night of the 25th?
A. Yes.
Q. Now, during the course of Dr. Jason's autopsy, did he have occasion to examine both the clothing of the victim and the victim herself?
A. As far as the clothing, I'm not sure. The victim, yes.
Q. And that was done in your presence?
A. Yes.
Q. Was anybody else present during the performance of the autopsy?
A. There was several people present. There were two assistants. I think one was Barbara Fenton from the medical examiner's office; sheriff's county ID was there and two I think Longport police officers were there.
Q. What would be the purpose of the sheriff's county ID person?
A. For positive ID, I believe, of the deceased.
Q. What about the taking of photographs? Did that occur?
A. Yes. That was also the sheriff's ID.
Q. What was done with anything that was

removed from the victim?

A. It was inventoried and kept by, I believe, the prosecutor's office.

MR. TALASNIK: Thank you, your Honor. I have no further questions.

THE COURT: Cross-examine?

MR. DAVIS: No further questions.

THE COURT: You may step down. Thank you, Officer.

(Witness excused)

THE COURT: Call your next witness.

MR. TALASNIK: Your Honor, I don't have any other witnesses here available to testify this afternoon.

THE COURT: Okay.

We had a lot of ground covered anyway today. We will pick up first thing in the morning. Again, at 9:00. It is my present expectation that we will not require you on Friday. I'm reasonably certain of that, so you can feel comfortable making plans this evening if you like as far as Friday is concerned. And I hope I will turn out to be right.

Again, I remind you to be careful as

it remains important, as it will throughout the case, to insulate yourself from any media, newspaper or other accounts with respect to the trial and to avoid any opportunity or any situation that puts you in the position of discussing anything about the case with each other or with anybody else.

We will see you first thing in the morning. Thank you.

(Whereupon, the jury leaves the courtroom)

THE COURT: Tomorrow?

MR. TALASNIK: Tomorrow I have Officer Harbison from the sheriff's department, Dr. Jason, Detective Fritz. Whether I can go beyond that, I will to see what I can do tonight.

THE COURT: What are the possibilities?

MR. TALASNIK: Detective Walsh.

THE COURT: Okay. So tomorrow you will be talking about among other things the pictures?

MR. TALASNIK: Yes, your Honor.

THE COURT: Do you want to give me

some -- because we have a couple of minutes this afternoon -- some possible sense of whatever the fault lines in that debate will be on the terms of a proffer, of what you perceive to be the areas of relevance for which you perceive you need some of the pictures?

MR. TALASNIK: Well --

THE COURT: I won't make any rulings today. I want some idea what to prepare for.

MR. TALASNIK: Well, I think it might be easier to discuss it after Dr. Jason testifies. Obviously, I will be careful in the examination of Dr. Jason to ensure that the photographs are not in any way seen by the jurors. But I think the overall relevance of the photographs is best understood in the context of having heard from Dr. Jason.

THE COURT: Okay. All right. I'm just trying to get a handle again on the schedule so we can be as smooth as possible next week.

Monday and Tuesday we have already talked about and it is your present expectation that you go as far as you need to

tomorrow so you will be able to finish up by Tuesday.

MR. TALASNIK: Yes, your Honor. I have no reason to believe that I will not be finished by Tuesday.

THE COURT: Okay. Anything else we need to or should discuss at this point?

MR. PRESTON: We had a discussion I believe in chambers concerning an issue that we had on the record yesterday. Given some rethinking on that line, I don't feel inclined to present the issue at this time.

THE COURT: The record will reflect that I suggested to Mr. Talasnik in the presence of Mr. Preston and Mr. Davis that while I wasn't making any specific rulings at this point, I did indicate to Mr. Talasnik I thought he should be prepared in the event we got to that point in the proceedings to make a proffer to me and to the jury as to what of the evidence that would have been presented in the first phase of the trial he would ask the jury to consider in connection with penalty phase.

I believe, and I will have specific

writing for you tomorrow, that I should, in general, charge the jury that with respect to the function of finding and evaluating aggravating and mitigating factors, they may consider any relevant information that was presented either in the first phase or in the penalty phase. But I also indicated to Mr. Talasnik that I thought it would be appropriate to have him define for the record, for the jury and for the court and defense the scope of that portion of the testimony in the first phase of the trial upon which he will place some reliance in that regard.

Anything else? See you tomorrow. Nine o'clock.

(Whereupon, the hearing adjourned)

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: October 13, 1989

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Jukes Intake
Part I
pgs. 1-130

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

STATE OF NEW JERSEY

vs.

RICHARD HIGHLANDER

TRANSCRIPT OF

TRIAL PROCEEDINGS

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

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APPELLATE DIVISION
JUL 11 1990
Clerk

Atlantic County Courthouse
Mays Landing, New Jersey
Wednesday, June 14, 1989

BEFORE: STEVEN P. PERSKIE, J.S.C.

ORDERED BY: JAMES JUKES, ADPD

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

MURRAY TALASNIK, Assistant Prosecutor
On Behalf of the State

NATHAN DAVIS, Assistant Public Defender
and
MICHAEL PRESTON, Assistant Public Defender
On Behalf of the Defendant

Reported by: Konstantin Koletas, CSR
Atlantic County Courthouse
Mays Landing, New Jersey

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THE COURT: Good morning, you may be seated.

All right. What do we have this morning?

MR. TALASNIK: I had indicated earlier that the State intended to call at this point one Edward Mickey Chambers. At your Honor's direction, I have produced him this morning before the jury has been brought into the room because your Honor indicated a determination to question Mr. Chambers with respect to his willingness to testify in knowing and voluntary waiver of any right to remain silent and right to counsel.

THE COURT: And Mr. Chambers is here this morning pursuant to a subpoena issued by your office?

MR. TALASNIK: Yes, he is.

THE COURT: Where is Mr. Chambers?

EDWARD M. CHAMBERS, having been duly sworn, was examined and testified as follows:

THE COURT: Mr. Chambers, good morning.

THE WITNESS: Good morning, sir.

THE COURT: Do you have an attorney, sir?

THE WITNESS: No, I don't.

THE COURT: Mr. Chambers, it is my understanding that you have been subpoenaed by the State to appear here today and to testify as a witness in the trial that is ongoing in this Court. Is that correct?

THE WITNESS: That's correct, sir.

THE COURT: It is also my understanding that you have given a statement apparently under oath in connection with whatever information you have in this matter; is that also correct?

THE WITNESS: That's also correct, sir.

THE COURT: I simply want to inquire of you now as to whether you understand certain things and, if so, whether you have any questions or problems.

It is my -- I don't know very much yet about the details of this case, but it is my understanding that the statement that you have given and presumably with the testimony that you might offer here in this court may

include facts which might subject you to criminal prosecution.

You have a right, if you choose to, not to answer any questions; the answers to which might subject you to criminal prosecution.

You have a right under the law to refuse to answer such questions. You also have a right, if you choose to, to consult with an attorney to get legal advice for yourself before you would agree to undertake to answer any questions that might tend to incriminate you. I cannot give you legal advice.

Let me ask you first if you understand everything I have just said?

THE WITNESS: Yes, sir.

THE COURT: Do you have any questions about what I just said?

THE WITNESS: No, sir.

THE COURT: Do you desire the opportunity to consult with an attorney to get legal advice as to whether you should testify in this matter?

THE WITNESS: No, sir.

THE COURT: Do you intend to testify and to answer any questions that are asked of you?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that if you choose to do so, the answers that you would give might -- the answers you might give might tend to incriminate you and might be used or usable, rather, in any prosecution against you for whatever crimes those answers may suggest you have committed?

THE WITNESS: Yes, sir.

THE COURT: Mr. Talasnik, any other questions?

MR. TALASNIK: No, thank you, your Honor. The State is prepared to proceed.

THE COURT: Mr. Davis?

MR. DAVIS: Yes. I would like to proffer to the Court or to the witness --

THE COURT: Proffer it to me.

MR. DAVIS: What I think the Court should continue to ask Mr. Chambers, I don't know if there was any agreement between he and the prosecutor's office, but I think he should be aware of the fact that the attorney general

is not bound by anything that the prosecutor has said to Mr. Chambers and the attorney general can proceed --

THE COURT: I am not going to ask him that. You may, if you choose, on cross-examination, if he testifies, elicit from him whatever understandings he has as to whether he has any protection or he doesn't, but as far as I'm concerned, that is not a proper subject of the limited inquiry that I have him here for this morning.

All right, sir, you may step down and have a seat in the back.

Will he be your first witness?

MR. TALASNIK: Yes.

THE COURT: You will be called back to testify in just a couple of minutes when the jury comes in. At that time I will ask the clerk to readminister your oath to you.

THE WITNESS: Okay.

THE COURT: Thank you very much, sir.

THE WITNESS: Thank you, sir.

THE COURT: Ready to proceed?

MR. TALASNIK: Yes.

MR. DAVIS: I'm ready, Judge.

THE COURT: Sheriff, bring the jury in.

For the record, I am satisfied that the witness understands his rights, has waived his right to counsel and further has waived his right to decline to answer questions and has voluntarily agreed to testify.

I am satisfied that he has done so knowledgeably and voluntarily and therefore may be called to testify understanding the circumstances involving himself.

Mr. Chambers, do you also understand if you can't afford a lawyer, under certain circumstances the Court could appoint one for you?

THE WITNESS: I do.

THE COURT: Understanding that, is your position still the same?

THE WITNESS: Yes, sir.

THE COURT: All right, thank you.

(Witness excused)

MR. TALASNIK: Judge, while we are waiting for the jury to come up, the Court wanted me to advise the Court as early as I

could about my scheduling. I think I will exhaust the witnesses I have available by the end of the court day on Thursday, the balance not being until Monday.

THE COURT: When will you know?

MR. TALASNIK: I'll be able to gauge I think by this morning's proceedings.

THE COURT: Okay.

(Jury enters the courtroom)

THE COURT: All right, ladies and gentlemen, good morning.

Let me see what is under the heading of housekeeping. The early morning line on Friday is we will not be here. I will know probably by the end of today and let you know for sure. We will, of course, be here tomorrow and we will pick up again on Monday. I don't yet know what to tell you about whether we will finish next week or not. It is an open question. As soon as I have some sense of it, I will let you know.

Mr. Talasnik, you may proceed with your next witness.

MR. TALASNIK: Thank you, your Honor.

The State calls Edward Mickey Chambers.

THE COURT: All right, Mr. Chambers, if you would be good enough to lean forward and use the mike. You speak softly and I want to make sure everybody can hear you in the courtroom.

EDWARD M. CHAMBERS, having been duly sworn, was examined and testified as follows:

THE COURT: All right, Mr. Chambers, if you would be good enough to lean forward and use the mike. You speak softly and I want to make sure everybody can hear you in the courtroom.

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Chambers, would you tell us where you live?

A. I live at 113 East Marion Avenue, Pleasantville, New Jersey.

Q. Mr. Chambers, how long have you lived in the Atlantic County area?

A. Oh, now about 10 years.

Q. What kind of work do you do, Mr. Chambers?

A. Well, as most recently, I was working for the recycling division of the county, but basically I usually do chauffeur work, drive limosines and things of that nature.
Q. I would like you to think back to the spring of 1988, specifically April of 1988. Were you doing chauffeur work back then?
A. Well, I was on and off. I was working at a hotel, but I was doing chauffeur work on the side.
Q. What kind of work were you doing at the hotel back in April?
A. I was a bellman and I was also -- I was parking cars.
Q. And how would you get hired for chauffeur jobs?
A. Well, being right across from Resorts and I knew a lot of the people over there that worked over there, and a lot of people would recommend me by mouth, by word of mouth.
Q. Was it fairly well known, then, in that area that you were available to do private chauffeur work?
A. Yes, sir.
Q. Do you know a fellow by the name of

Richard Highlander?
A. Yes, I do.
Q. Do you know him well?
A. When you say well, would you explain that, please?
Q. Is he somebody that you would, for instance, see every day or every week?
A. No. He's not someone I see every day or every week.
Q. Is he someone that you know enough to identify on sight?
A. Yes, he is.
Q. Is the fellow that you know as Richard Highlander in the courtroom today?
A. Yes, he is.
Q. Would you point him out, please, for the jury?
A. He's the gentleman sitting right there in the middle.
THE COURT: The witness is pointing to the defendant.
The white shirt with the tie.
BY MR. TALASNIK:
Q. Have you ever done any chauffeur work for Richard Highlander?

A. Yes, I have.
Q. I want to direct your attention to the early morning of Monday, April 25, 1988. It is April a year ago. Did you have occasion to see Mr. Highlander early that morning?
A. Yes, I did, sir.
Q. About what time did you see him and where were you?
A. Well, I was on my job, I believe it was around six o'clock in the morning.
Q. When you saw him, did you have a conversation with him?
A. Well, we had a brief conversation at that time because I didn't recognize him at first when I saw him.
Q. After you recognized him, did you have a conversation with him?
A. Yes, we did. We had a brief conversation.
Q. What was that brief conversation?
A. Well, he was asking me if I was interested in doing some work, some driving work for him and --
THE COURT: Excuse me. Just a second. I'm sorry. Somebody has some coins

or something. Whatever it is -- thank you. Could I have the answer read back, please?

(Whereupon, the reporter read the previous answer)

THE COURT: Okay. Continue.

A. Right. And the amount was $300 I could take for taking him up to New York.

Q. What was it that he wanted you to do specifically?

A. Well, he wanted me to drive him out of town.

Q. Did he say when he wanted you to drive him out of town?

A. Yes, he did. That same day.

Q. And did he say what vehicle would be utilized to drive him out of town?

A. Well, he said we can rent a car.

Q. Who was going to pay for the rental car to drive him out of town?

A. He was.

Q. And you were to receive a fee for doing this service?

A. Yes, sir.

Q. And the fee would be what?

A. $300.

Q. Would that be about average for this kind of a job as far as your experience is concerned?
A. Well, I would make around that much, counting my tip and everything.
Q. Okay. Did you agree for the sum of $300 to drive Richard Highlander with a rented car out of town that day?
A. Yes, I did.
Q. Did he tell you where it was he wanted you to drive him?
A. No, not specifically.
Q. Just out of town?
A. Yes, sir.
Q. Did he say why he wanted you to drive him out of town?
A. He had said something about he was having some problems, some difficulties, and, you know, it was to his advantage to leave town.
Q. After this brief conversation, when was the next time that you saw Mr. Highlander that morning?
A. Well, when I got off from work, we had arranged to meet around 9:00.

Q. Did you, in fact, meet Mr. Highlander about nine o'clock on the morning of Monday the 25th?
A. Yes, I did.
Q. And had you just finished a shift of your job?
A. Yes, I had just gotten off from my job.
Q. Didn't you go home first and at least get cleaned up and changed?
A. No, I didn't.
Q. How come?
A. Well, he had asked me if I was interested in the job to meet him at that specific time.
Q. So you went there to meet him?
A. Yes, sir.
Q. All right. Did the two of you have a conversation at about nine o'clock in the morning when you met him to begin to do your job?
A. Yes, sir.
Q. What did the two of you talk about?
A. Well, other than the job, he was complaining that he had had some difficulties,

that he had some problems with a girlfriend of his and that he had some sort of probation hanging over him, I think it was like 11 years. And if he didn't leave town, he would have to do it.

Q. Okay. Where did the two of you go after you first met up with him about nine o'clock that morning?

A. Well, we went to the hotel on Illinois Avenue. I'm trying to think of the name of it. Well, it's the hotel right there on Illinois Avenue.

Q. What was your purpose, the two of you, in going to this hotel?

A. He had done some work there and they owed him a check.

Q. Okay. And did Mr. Highlander tell you that they owed him a check?

A. Yes, he did.

Q. And what was your purpose in going there with Mr. Highlander that morning?

A. He was going to pick up his check.

Q. Okay. Did you, in fact, go to this hotel shortly after 9:00 in the morning?

A. Yes, we did.

Q. Was he able to get the check?
A. At that time, he told me that he was told he couldn't pick it up until around 12:00.
Q. Did you remain with Mr. Highlander, even though he didn't have the check?
A. Well, he assured me that he was going to definitely pick up the check and it was just a matter of time, you know, before he would be able to pay me.
Q. Where did the two of you then go after he advised you that the check that he needed would not be available until noon or so?
A. Well, we walked up on the boardwalk for a while.
Q. Did you make any stops on the boardwalk?
A. Yes. He stopped at a -- at one of those condominium office buildings -- places. He knew somebody there and he was trying to borrow $20.00.
Q. Did you go in with him?
A. Yes, I went in.
Q. Did you hear him asking people for $20.00?

A. He was speaking to somebody there, a young lady he knew, and he asked for the money and I don't believe they had it at the time.
Q. Okay. Okay. Now, after the two of you left this complex on the boardwalk where he tried to borrow money, where did the two of you then go?
A. Well, we did have a few dollars between us and we stopped off at the Greater Pit -- Greater Pittsburgh Bar on -- I think, it's Tennessee Avenue and the Boardwalk.
Q. What did you do there?
A. We had a couple of beers.
Q. During the time that you're sitting there having a couple of beers, did you have any conversation with Mr. Highlander?
A. We talked, vaguely we talked.
Q. What kinds of things did he talk about?
A. Well, he spoke about the type of work he was doing. I think it was a window washing business that he had. And he -- off and on he kept coming back to these hard feelings he was having, problems he was having with his girlfriend.

Q. Tell me what he said to you about his problems and his hard feelings towards his girlfriend.

A. Well, just basically that he had been very good to her and she had been putting him through a lot of changes and he was really like uptight about it, you know, and he has hard feelings, he was going through changes with the family and different things of that nature.

Q. After spending some time together at this bar, where did the two of you then go?

A. Well, then we proceeded further uptown to a friend of his house. He had a friend who lived uptown in the Lighthouse Plaza that had a car.

Q. Why did he indicate that he wanted to go see this friend?

A. Well, he said for one thing the fellow had worked with him and he owed him some money and he wanted to get him straightened out, too, and also he had a car and he could drive us to where we had to go and also drive us to go pick up the rental car.

Q. Do you remember the friend's name?

A. The fellow's name was Rufus. I never knew his last name.
Q. But the fellow that Mr. Highlander wanted to go see, his name was Rufus?
A. Yes.
Q. And he lived in Atlantic City?
A. Yes, sir.
Q. Did the two of you walk over to Rufus' house?
A. Yes, we did.
Q. Was he there?
A. No. When we first got there, he wasn't home, so we had to wait around for a while.
Q. Did Rufus ultimately show up?
A. Yes, he did.
Q. Could you estimate for us about what time of the morning it was when Rufus showed up at his house when you and Richard were waiting?
A. Well, I guess it was around a little after 10:00, somewhere around there.
Q. Were you introduced to Rufus?
A. Yes, I was.
Q. And did you and Richard Highlander and

Rufus go into his house?
A. Yes, we did.
Q. Tell us what went on inside Rufus' house?
A. Well, we went in and Rufus introduced us to -- he had a nephew there and all, and offered us a beer, and he sat and had some beer and we started talking.
Q. Tell us about the conversation that involved you, that involved Rufus, that involved Richard Highlander while you were sitting in Rufus' house late that morning.
A. When you say the conversation --
Q. Any conversation among any of those three people; you, Rufus or Richard Highlander.
A. Well, he was -- he was saying something about how he was going to turn the business over to Rufus.
Q. Now, back up. Who was going to turn the business over to Rufus?
A. Rick was going to.
Q. Rick said he was going to turn his business over to Rufus?
A. Yes.

Q. Which business would this have been?
A. Well, I take it it was the window washing or the cleaning business that they were into.
Q. Okay. After Rick indicated that, that he was going to turn what business he had over to Rufus, what was the next thing that happened?
A. Well, vaguely, you know, like the conversation went on and then he asked Rufus -- he said something to him about did he still have something of his, you know, the thing or something of that nature.
Q. When you use the word of he, there is a possibility of confusion.
A. Rick asked Rufus.
Q. Asked him what?
A. If he still had something that belonged to him.
Q. Rick asked Rufus if Rufus still had the thing that belonged to Rick?
A. Right.
Q. Okay. And what did Rufus say?
A. He said yes, he did.
Q. What happened next?

A. So he asked him to go get it and he went into the back room and he came out, he came out. I don't know if it was in a bag at that point or if he just had it in his hand, but it was a weapon.
Q. All right. When you say he got up and went in the back, who are you talking about?
A. Rufus.
Q. Rufus is the one who got up and went into the back and returned with something?
A. Yes.
Q. Was this action by Rufus in response to Mr. Highlander asking Rufus if Rufus still had that thing that belonged to Mr. Highlander?
A. Yes, it was.
Q. When Rufus came back, tell us what he had.
A. He had a weapon with him, a pistol.
Q. What kind of weapon?
A. Well, it looked like a 357.
Q. What's a 357?
A. A 357 magnum, a pistol.
Q. A handgun?
A. Yes, sir.

Q. Now, was this -- do you know the difference between a revolver and an automatic?
A. Do I know the difference between an automatic and revolver?
Q. Yes.
A. Yes, I do.
Q. Did this gun have a cylinder like a revolver?
A. Yes, it did.
Q. Did you see that handgun, that revolver?
A. Yes, I did.
Q. Who was it that brought it out?
A. It was Rufus that brought it out.
Q. What did Rufus do with the gun in your presence and Mr. Highlander's presence?
A. He passed it to Rick.
Q. What did Rick do with it?
A. He just looked at it and more or less fiddled with it, you know, showed it to me.
Q. Then what happened?
A. Then he gave it back to Rufus and Rufus took it and put it back up.
Q. Was there any conversation at that

point between Rick and Rufus with respect to that gun?

A. Only that Rick said something to the effect that he would pick it up later.

Q. He would pick it up later?

A. Yes.

Q. After Rufus came back into the room having put the gun away, what did the three of you then do?

A. Then we were talking about getting ready to go back down to see about picking up his check.

Q. Now, would Rufus have an interest in this check that Mr. Highlander seemed to want to get?

A. Well, Rick owed him some money from working. This was the understanding I had. And he wanted to pay him before he left.

Q. Okay, okay. So what did the three of you then do?

A. Well, actually it wasn't three of us. It was four of us. It was Rufus' cousin -- I'm sorry, nephew.

Q. So there are three of you plus Rick who leave Rufus' house?

A. Yes, that's right.
Q. Where did the four of you go?
A. Well, when we left, we got into the car and we drove back -- oh, it was the Madison House, that was the name of it.
Q. Back up. What do you mean it was Madison House? What is that?
A. Madison House was the place I originally met Rick on Illinois Avenue. When I said the hotel and I couldn't think of the name, it was the Madison House.
Q. So that was the place that Rick wanted to get the check from?
A. Yes, it was.
Q. Is that the place where the four of you then went after leaving Rufus' house to see if the check was ready?
A. Yes, we did.
Q. Did you arrive at Madison House?
A. Yes, we did.
Q. Was it about noon?
A. Excuse me. When we got there, yes, it was around noon.
Q. Did anybody get out of the car?
A. Yes. Rick and, I believe, Rufus got

out and went inside to see about the check.
Q. Did you remain outside?
A. His nephew and I, yes, we stayed out.
Q. Was Rick in there very long?
A. I would say not over 10 minutes or so.
Q. And were you there when he came out?
A. Yes, I was.
Q. Do you know whether he had the check?
A. Yes, he had the check.
Q. Did the four of you then go someplace else together in the car?
A. Yes, we did. We went to see about getting the check cashed then.
Q. Right then and there?
A. Yes, sir.
Q. Where did you go to try to get the check cashed?
A. Well, Rick had a friend that owned a store up right past the high school in Atlantic City, like going up towards Ventnor. As a matter of fact, it was right off of Ventnor Avenue.
Q. All right.
A. So we drove up there and he went to see if his friend would cash the check for

him.
Q. How do you know that he was going to see this friend in Ventnor about cashing the check?
A. He said so.
Q. Okay. Did you arrive at this friend's store in Ventnor up near the high school circle?
A. Yes, we did.
Q. Did Rick get out of the car at that point?
A. Yes, he did.
Q. What did you do?
A. Well, we stayed in the car. We waited for him while he went inside and spoke to his friend.
Q. That would be you and Rufus and Rufus' nephew?
A. Yes.
Q. Did Rick stay with that friend for some period of time? Tell us what went on.
A. Well, he spoke to him, came back out and said that the fellow was going to take him someplace to get the check cashed because he couldn't do it for whatever the reason was at

that time and we was to wait there.
Q. Okay. Did Rick then leave with the friend?
A. Yes, he did.
Q. Do you know for sure where they went?
A. I don't know at all where they went.
Q. How long were they gone together?
A. Oh, maybe about 25 minutes or so.
Q. Okay. Were you there when Rick and the friend returned?
A. Yes, we were.
Q. Were they still together?
A. Yes.
Q. Do you know whether Rick was successful in getting that check cashed with the friend?
A. Well, he got the check cashed, but I don't think they got it cashed where they took him. I think his friend cashed it for him.
Q. Okay, all right. Did Rick have a sum of cash with him when he left his friend?
A. Yes, he did.
Q. Do you know about how much we're talking about here?
A. I think it was somewhere around

$1,600.

Q. All right. Now, where did the four of you, including Rick, go after Rick had gotten the $1,600 or so out of the check?

A. Well, at that point we went to see about renting the car.

Q. Do you remember where you went?

A. I believe the first place we went was -- I think it was Budget Rent-A-Car. I believe it was Budget because the first place we went we were not able to rent one because I didn't have a credit card. No one had a credit card and they wanted a credit card.

Q. Where did you go then in an effort to try to rent a car?

A. Then we went to Ruffu Ford.

Q. Do you know where Ruffu Ford is?

A. Yes, in West Atlantic City on Albany Avenue.

Q. What went on when you got to Ruffu Ford?

A. Well, when we got there, we had found out we needed $300 when we were at Budget because we made a call. So Rick gave me the money and I went inside to rent the car.

Q. Where did the money come from to rent the car?
A. I had said that Rick gave me the money.
Q. In whose name was the car rented?
A. I rented the car in my name.
Q. Did they ask you for identification or anything like that?
A. Yes, they did. I showed them my driver's license and all.
Q. So the car was rented in your name with your credentials?
A. Yes, sir.
Q. Weren't you concerned about renting a car with your credentials and in your name?
A. No, sir. I was just doing a regular driving job and I had no reason to have any concern.
Q. Mr. Chambers, I'm going to show you a document that has been marked as S-14 for identification. I would like you to look at it and tell me if you recognize what that is.
A. Yes, I do.
Q. What do you recognize that to be?
A. It is the agreement that was made up

that I signed when I rented the car.
Q. And it's in your name?
A. Yes, sir.
Q. And does it have your signature on it?
A. Yes, it does.
Q. What happened with the group now that the car had been rented?
A. Well, once I had rented the car, Rick and Rufus were outside in his car talking and so I don't know what was said or anything. But then Rufus left and I came out and I got the car and pulled around and Rick got in the car.
Q. What kind of car was it?
A. It was a Taurus, a Ford Taurus.
Q. Well, now, about what time was it getting to be after all this had happened and you had worked the night shift and you were driving around and you had rented the car? What time was it maybe getting to be?
A. I guess it was around 1:30, two o'clock, somewhere around there.
Q. Weren't you starting to get tired?
A. Yes, I was.
Q. Did you talk to Rick about maybe going

home and at least catching a shower, changing clothes?

A. Yes, I asked him about that.

Q. What was Rick's reaction?

A. Well, for some reason, he didn't want me to leave. I got the impression that maybe he thought I -- he knew I was tired and maybe I wouldn't want to, you know, do the job, wouldn't want to take him, you know, take him to New York. Which I was getting tired at that point.

Q. But he didn't want you to go home?

A. No, he didn't.

Q. Did you do anything instead?

A. Well, he made a suggestion, because I was telling him I wanted to go home and wash up and change clothes and everything, so he made the suggestion that he would treat me to an outfit and we could go and check into a hotel and wash up and clean up, freshen up a little bit.

Q. Did you, in fact, do those things?

A. Yes, we did.

Q. Where did you go?

A. Well, we went offshore to Herman's

Sporting Goods store and we bought a -- he bought a warmup suit for me and one for his self.

Q. All right. Where did you go after that?

A. And then when we left there, we went further offshore, out towards Somers Point, Ocean City, and we checked into, I believe, Pier 4.

Q. What is Pier 4?

A. It's a hotel -- motel out there.

Q. Who made arrangements to rent a room at the Pier 4?

A. Rick did.

Q. Did you go in with him?

A. No. I was outside in the car.

Q. Did you ever go into the lobby while Rick was completing whatever he had to complete, registration?

A. Well, by the time I had finished, he had already completed that.

Q. So you did get into the lobby?

A. Yes. Well, I had to come in to go upstairs to the room.

Q. Okay, all right.

Q. Did you make use of the room?
A. Yes, we did.
Q. In what way?
A. We went upstairs and both of us showered, changed clothes and everything and I laid down on the bed for a while.
Q. What time was it getting to be by the time you were in the hotel room Rick had acquired and showered, changed and you were laying down there?
A. It had to be getting towards 4:00, around that.
Q. Had you eaten anything?
A. No, I hadn't, not yet.
Q. What did you do about eating?
A. Okay. He said we can get something to eat because I told him I was hungry and he said there was no problem. There was a restaurant downstairs, you know, in the -- they had a bar and restaurant down there. So we went downstairs and we had something to eat.
Q. Do you remember the name of the place?
A. I think it was Crab Trap or something of that nature.

Q. Now, did you and Mr. Highlander eat together?
A. Yes, we did.
Q. Did you have anything to drink together?
A. Yes, we did.
Q. Was there any conversation while you were at the Crab Trap regarding this girlfriend?
A. Well, he kept coming back to the fact of having hard feelings about her and he didn't feel she should get off with putting him through all those changes, you know, and how he wanted to do something to get back at her.
Q. But did he ever specify what he meant he wanted to do something to get back at her?
A. Well, he had mentioned that he had thought about -- he had thought about killing her.
Q. He had thought about killing her?
A. Yes.
Q. How did you react to that?
A. I didn't want to hear that.
Q. How did you communicate to Rick that

you didn't want to hear him about thinking about killing her?

A. When we talked about it, I told him anyway I didn't feel any woman was worth, you know, a man losing his freedom over. You know. And we talked some more and at that point I felt that he just had a lot of hard feelings, you know, being jilted or whatever you want to say, about a woman and he was just spouting out these feelings, you know, and I just didn't want to hear him. I was interested in doing this job, you know, getting paid and going home.

Q. Was there any more discussion about why it was he wanted you to drive him out of town up to New York?

A. Well, other than the fact that he knew I was a good driver and being from New York, I know my way around good, just the fact that he felt I wouldn't say anything about him leaving town, you know, with him having some sort of probation hanging over his head and everything.

Q. Okay, okay. How much did you have to drink there?

A. Oh, it's hard to say. We were drinking pretty frequently, pretty regularly.
Q. Were you drinking to the point that you didn't think it was a good idea for you to be driving?
A. Well, if I had gotten to that point, then I wouldn't have been able to drive, you know, so I was still able to drive.
Q. Still had your wits about you?
A. Yes, sir.
Q. What about Rick? He was drinking, too, wasn't he?
A. Yes.
Q. Was he far enough gone, for instance, that you would not let him drive you around?
A. Well, I've never really -- I've never really driven with him before as far as him being a good driver or whatnot, but I would say that he might have been -- he was acting somewhat reckless, you know, with his actions, just with his speech and all.
Q. Was he able to communicate with you?
A. Yes, he was.
Q. Carry on a conversation?
A. Yes.

Q. Was he able to give you directions?
A. Yes.
Q. Was he able to walk?
A. Yes.
Q. After you had dinner and a few drinks at the Crab Trap, about what time was it getting to be?
A. Around 5:30, somewhere around there.
Q. What is it that the defendant, Mr. Highlander, what is it that he wanted you to do at that point?
A. Well, at that point we left to drive back towards Atlantic City, but he wanted to go through the Margate way, he wanted to see if he could locate his girlfriend.
Q. Whose idea was it to drive through Margate to try to locate the girlfriend?
A. Rick was -- he was telling me what he wanted me to do.
Q. Did you know where to drive other than where Rick would give you directions?
A. No. I wasn't familiar with Margate.
Q. What kind of directions did he give you in terms of where he wanted you to go?
A. He was telling me what street, where

to go, what street to turn down to. He had two or three places that he wanted to check by to see if he saw her car.

Q. And did he tell you what it was exactly he was looking for at these two or three places he wanted to check?

A. Well, he was looking for a car that he said he had bought for her.

Q. Okay. Did he give you directions to these two or three places that he wanted you to check?

A. Yes, he did.

Q. This would have been sometime after five o'clock?

A. Yes, sir.

Q. Do you know whether he spotted that car?

A. Well, at first he didn't, you know. And after we had checked one or two of the spots more than once, on the way out he said he saw the car.

Q. Did he indicate that he saw the car at one of these spots that he wanted to check out?

A. Yes, sir, he did.

Q. And how do you know that he saw the car?
A. Well, he described it. I know it was black. But he knew it right off.
Q. Did he tell you that that was her car?
A. Yes, he did.
Q. After he spotted the car, what instructions did he give you?
A. Well, at that time he seemed to be a little confused as to exactly what he wanted to do or how he wanted to do whatever it was he wanted to do. So it was a thing of, well, she's there and she will probably be there for a while, you know, so let's go on back into Atlantic City.
Q. Do you now recall the location where he had seen the car?
A. The name of the bar, the Greenhouse or the Greenery or something like that.
Q. Okay. So where did he have you drive after he spotted the car at the Greenhouse?
A. After we left from that area, we came back into Atlantic City and we stopped off at a bar.
Q. Do you know which bar?

A. Yes. A bar called Piggy's in Atlantic City.
Q. How long were you and Rick there?
A. We must have been there about an hour and a half or so.
Q. What did the two of you do there?
A. We were sitting in there drinking and talking to people, playing music and just in general just drinking.
Q. How were you feeling?
A. At that time I was still handling it, but I was tired.
Q. What about Rick? How was he acting?
A. Pretty much the same, except his adrenalin seemed like it was up.
Q. What do you mean by his adrenalin seemed like it was up?
A. Well, he didn't appear to be as tired as I was. He was more alert, more into it.
Q. Understood. Where did you go after you left Piggy's?
A. After we left there, we stopped off at a friend of mine's house in Atlantic City and we did some more drinking and everything, we were there getting high.

Q. What do you mean by getting high?
A. We were drinking and we also had some cocaine at the time.
Q. Both of you used it?
A. Yes.
Q. How were you feeling after all that?
A. Well, to be truthful, it did kind of pick me up a little bit.
Q. The cocaine has the effect of bringing you back, of picking you up?
A. Boosting --
MR. DAVIS: Objection to leading.
THE COURT: Sustained.
BY MR. TALASNIK:
Q. What effect did the cocaine have on you?
A. Excuse me?
Q. What effect did the cocaine have on you?
A. On me personally, it picked me up a little bit.
Q. You described Rick back at Piggy's as his adrenalin was up, seemed to be more into it and less tired than you.
A. Yes, sir.

Q. How was Rick's demeanor affected by using the cocaine?
A. He was picked up, too.
Q. He was as well?
A. Yes.
Q. After being at your friend's house for a while, what did Rick want to do then?
A. Well, by then it was -- the exact time I'm not sure, but it was -- I believe it was a little after 8:00, somewhere in there, and he was about ready to leave then, you know, because then at that point we both had come to the conclusion, too, that if I was going to drive him to New York, I was going to have to get him there because I had been up all that previous night working and all that day now and, you know, I had already received -- I had received the $300 from him. I had that and I just wanted to earn the money that I got paid for, so I was ready to take him, too, but he was ready to go at that point.
Q. The friend's house that you were at is in Atlantic City, I take it?
A. Yes, it was.
Q. Did you just hop on the Expressway and

hook up with the Parkway and go on up to New York?

A. No, we didn't, sir.

Q. Why not?

A. Because he wanted to stop off first.

Q. Where did he want to stop off first?

A. First he wanted to stop back by his friend Rufus' house.

Q. Did he say why?

A. At that time it wasn't totally clear, you know. At that particular time.

Q. Did he tell you why he wanted to stop at Rufus or did he just say I want to stop at Rufus' house?

A. First he said he wanted to stop at Rufus' house and then it was a thing of I want to get all my belongings because I'm getting ready to leave and I'm not coming back here.

Q. Did you take him to Rufus' house?

A. Yes, I did.

Q. Did you stay in the car or did you get out?

A. He asked me to stay in the car.

Q. What did he do?

A. He went into Rufus' house.

Q. How long was he there?
A. Not longer than about five, six, seven minutes.
Q. Did he come out of the house?
A. Yes, he did, sir.
Q. Did he have anything with him?
A. He had a bag, a paper bag.
Q. What did he do with the paper bag?
A. He shoved it up under his sweater, jacket.
Q. Did he tell you what was in the bag?
A. Well, at that point I had seen the bag before from being in the house. I recognized the bag.
Q. What did you recognize the bag to be?
A. As the same bag that had the pistol in it.
Q. That's the bag that he brought out with him from Rufus' house?
A. Yes.
Q. And he put it where?
A. When he got in the car, he took it out from underneath his sweater and stuck it up under the front seat.
Q. And you saw that?

A. Yes.
Q. Where did he want you to take him then?
A. Well, then at that point he wanted to go back through Margate to locate his girlfriend.
Q. Did he give you directions how to get there?
A. Yes, sir.
Q. Did he tell you where to drive to?
A. Yes, sir, he did.
Q. Did you drive him there?
A. Yes, I did.
Q. Did you arrive at the same bar that he had earlier spotted her car at?
A. Yes, we did.
Q. Tell us what happened.
A. Well, at that point when we got up to the bar -- now, I'm not exactly sure if we went by her house first before we went to the bar checking to see if she went back home. But I do know that when we swung by the bar, he saw her car was still there, her car was there.
Q. How do you know he saw her car there?

A. He said so.
Q. Tell us what happened next. He asked me to drive through the lot.
Q. Did you do that?
A. Yes, I did.
Q. Quickly, slowly, how did you drive through?
A. Slowly, very slowly.
Q. Tell the jury what happened.
A. Well, at that point I was mid-way through the lot when the doors of the bar opened and this girl and this gentleman came out.
Q. Were they together?
A. Yes, they were.
Q. What did Rick say?
A. Something to the effect there she is or there's the bitch.
Q. What did he do?
A. He made like one motion, reached under the seat and opened the door at the same time.
Q. What did he do next?
A. He jumped out of the car and started running towards her.
Q. Tell us what you saw and heard?

A. Well, at that point when he jumped out, realization hit me of what was happening and I was trying to pull out of the parking lot. And as I pulled out of the parking lot, I heard two shots go off and then I heard a third one.

Q. Did you get out of the car when Rick did?

A. No, sir.

Q. Did you --

A. I never got out of the car.

Q. Did you see what direction Rick was heading when he got out of the car?

A. He was running straight towards them.

Q. Did he have anything with him?

A. The bag, the bag with the gun in it.

Q. How soon after seeing him get out of the car with the bag with the gun in it, running towards the girl and the companion did you hear the first two shots?

A. It was shortly after. It was very shortly after, because he was running when he got out of the car.

Q. Okay. And after the first two shots, you then heard a third?

A. Yes, sir.
Q. Were you actually able to see the shooting?
A. No. Not looking directly at it, no. I wasn't looking directly at it.
Q. What were you doing?
A. At that point I was in the processing of turning out of the lot when I heard the first two shots and I flinched and sort of froze for the moment.
Q. Then what?
A. Then as I was getting myself together, as I said, a third shot went off. I had just turned out of the lot. I was getting ready to pick up speed and get out of there.
Q. What happened?
A. By that time, Rick had ran back to the car and he had the weapon in his hand.
Q. Did he get into the car?
A. Yes, he opened the door and jumped in.
Q. Did he still have the weapon with him?
A. Yes, he did.
Q. Was it the same one you had seen earlier that day at Rufus' house?
A. Yes, it was.

Q. And the same bag that you saw him bring from Rufus' house before going to Margate that night?
A. Yes.
Q. And the same one that he took out of the car with him when he ran up to the girl and her companion?
A. Yes, sir.
Q. When he got in the car, what did he do?
A. Crouched down on the floor in the front seat.
Q. What did he say?
A. He told me to get out of there.
Q. Did he give you any directions?
A. Well, as I said, I wasn't familiar with where I was at the time and also I was really shook up. I was more or less driving in the blind. He was telling me which way to go.
Q. How did you get to whatever bridges you took to get out of this area?
A. Well, we turned up towards -- going up towards Ocean City in Margate and we turned up going towards Ocean City and took that bridge

over -- I believe it goes over into Somers Point and from there we got onto the Parkway heading north.

Q. How did you know how to get to the Parkway?

A. Well, as I said, I was driving kind of like blind. A lot of it was just luck. Some was instinct and some was luck and others he was down directing me.

Q. He was giving you directions?

A. Yes, sir.

Q. Did he say anything about what had just occurred in the parking lot?

A. Other than the fact that he shot her, shot both of them.

Q. He told you that he shot her?

A. Yes, sir.

Q. And he told you that he shot both of them?

A. Yes, sir, that's what he had said.

Q. Did you continue to drive up the Parkway with Mr. Highlander and the gun?

A. Yes, sir, he was still in the car and so was the gun.

Q. What did you talk about?

A. At that point I was very upset, realizing I had been indirectly involved in a homicide. I had no knowledge that this was going to happen. He was in, so many words, apologizing to me for getting me involved in the situation, it was something he had to do.
Q. He told you this was something he had to do?
A. Yes, sir.
Q. What do you mean he was apologizing for getting you into the situation?
A. Well, the fact that I was involved, I was there, you know. I was there. I had rented the car. I had no idea what was going to go down. I didn't believe that he was capable of doing something like that. I really didn't.
Q. When he was talking to you on the way up, apologizing for putting you in that situation, telling you that he had to do it, was he coherent?
A. He was making sense.
Q. You were able to understand him?
A. Yes, I was.
Q. When he gave you directions on how to

get out of town, was he coherent?
A. Yes, sir.
Q. Were you able to understand him?
A. Yes, I was.
Q. Was he able to speak in rational sentences?
A. Yes, sir.
Q. Why didn't you just drive to the police?
A. At that point a lot of thoughts went through my mind and one of them was that if he was capable of doing that to them, that I could also go.
Q. Did he still have the gun?
A. Yes, sir. And he made a statement, too, if we were stopped by the police, that he wasn't going to give his self up.
Q. That he would or would not?
A. Would not.
Q. Okay. Did you make any stops before you got up to New York?
A. After we got up around 90 miles away, up around the Point Pleasant area on the Expressway, I was able to get him to let me make a stop. I had to go to the bathroom.

And he got out with me and went to the bathroom.

Q. Why didn't you just book?

A. At that point?

Q. Yes.

A. Well, for one thing --

THE COURT: Why didn't you just what?

MR. TALASNIK: Book -- leave. I'm sorry, your Honor.

A. As I said, when I got out --

THE COURT: Watching a lot of television, Mr. Talasnik?

All right, sorry.

A. When I got out of the car and went to the bathroom, he was with me, you know, and at that point he was with me and there was no point. I was by myself, plus I wasn't just going to run off and leave the car. Didn't make any sense because the car was rented in my name.

Q. Did you finish the trip taking him up to New York?

A. Yes, I did -- I did get him up to New York.

Q. Was there any conversation in the car on the way up to New York after that stop?
A. Just the same thing more or less over and over again.
Q. Tell us what you mean, the same thing?
A. Well, it was more about the fact that what he had did and it was something he felt he had to do and that he was sorry againg for getting me involved.
Q. It was something he felt he had to do?
A. Right.
Q. And the only sorrow was that he got you involved?
A. Yes.
Q. What did the two of you do when you got up to New York?
A. When we first pulled up, I was still kind of shook up and he didn't know exactly how he was going to leave here and didn't know whether he was going to leave by bus, by train or what. And we spoke abcut Penn Station, talked about Port Authority, so in the process, I don't know whether it came from him or came from me about stopping off and having a drink, you know. I wanted to get out of the

car and around some people.
Q. Okay. Did you stop?
A. Yes, we did. We stopped at a bar.
Q. When you talked to Mr. Highlander and he was discussing whether he was going to leave town by bus or by train, were you able to understand him?
A. Yes, I was able to understand him. But there was never any mention of where he was going to go to.
Q. Did he appear to be capable of clear thinking?
A. Well, he knew he had to do something, but it seemed like he didn't know what exactly he was going to do.
Q. Just that he was going to leave?
A. Yes, sir.
Q. And it would be by one of those modes of transportation?
A. Yes, sir.
Q. Did you get that drink?
A. Yes, we did.
Q. Now, where was the gun all this time?
A. It was in that -- in the bag up under the seat. After we made that first rest stop

and he got back in the car, then he was sitting upright in the seat, normally. And the gun was in the bag up under the seat.

Q. Did you do anything with that gun after you got up to New York?

A. Well, after we got up to New York, I told him -- I asked him what he was going to do with the gun because I didn't want the gun in the car and he said he had no use for it and he didn't want to carry it around. He was just going to leave it there and I could get rid of it any way I wanted to.

Q. Did you move it around?

A. I went out to the car and I opened up my trunk, you know. The gun was still in the bag and I took the bag and I went to the trunk. I was going to stick it in the trunk. There was nowhere I could put it there where it wouldn't be in plain sight and I brought it back and put it back where it was at.

Q. Did you and Rick later split up?

A. When you say later split up --

Q. Go separate ways.

A. Yes, we did. After we had the drink, we got back in the car and dropped him off at

Port Authority.
Q. Can you estimate for us about what time it was when you dropped him off at Port Authority?
A. Well, it had to be in the 12:00 o'clock area, the time that we left -- from the time that the incident happened and we got up to New York.
Q. What is Port Authority?
A. Well, Port of Authority in New York is where the buses leave from New York or enter New York.
Q. How did you know to leave him off at Port Authority?
A. How did I know to?
Q. Yes.
A. Well, being from New York, I knew that's where all the buses leave and enter and, you know, he had decided he wanted to go to the Port Authority.
Q. That was his decision?
A. Yes, sir.
Q. And you dropped him off there?
A. Yes.
Q. Around midnight?

A. Yes. It might have been a little after midnight.
Q. On the evening or into the early morning of when the shooting occurred?
A. Yes, sir.
Q. Is that the last time you saw Rick Highlander?
A. Yes, it is.
Q. Is it the last time you've had any contact with Rick Highlander?
A. Yes, it is.
Q. What happened to the gun?
A. Well, after he left, I drove uptown, up towards Harlem and stopped off again and had another drink and then I went first uptown, up around 158th Street and I ran into a young lady I knew. We had a conversation. I went by her house and in the process she introduced me to another fellow in the area, like a local hustler. I got into a conversation with him and I mentioned that I had a weapon in the car that I had no use for, didn't want it at all and I explained to him that it had been used in a crime. He said he knew somebody that probably would buy it.

So he took me up to this fellow's house. We got up there, we talked, the guy wanted to see the weapon. I asked this other fellow to go down to the car and get it. I didn't even want to handle it, you know. He went down to the car, got the weapon and brought it up and and showed it to the guy and the guy said I'll go and I'll make the sale for you. You can wait here.

So I waited there and he came back and he sold the gun.

Q. What did you get out of it?

A. What he sold it for -- it wasn't strictly money. It was $50.00 in cash and about seven or seven-and-a-half grams of cocaine.

Q. That's what you got for it?

A. Yes. That's what I got for it.

Q. What happened to the car?

A. Well, later on, after that, I left from there and went back around the girl's house with this other fellow Slim. That was the guy who took me around to the guy's home, that was his name.

At this point, I was totally

exhausted, overtiredness and everything else came down on me, the drinking and the cocaine that I had and did at that time and I think I had rested for about an hour or so and in the process of this time, the fellow Slim, he took my keys, claimed to the girl he was going out to the car to get some cigarettes and he rode off with the car. So when I came to, the car was gone, you know. So in the process of me raving with her about the car being stolen and everything or the guy taking the car, because I had just met this guy, I went back out, the car was back there, but the guy was gone and he had locked the car up and taken the keys. So I wasn't able to get into the car.

Q. What did you do about getting alternate or substitute keys so you could get the car back home?

A. Well, what happened was I had to call back here to Atlantic City and I had my fiancee get in touch with Ruffu Ford and I had to get the number of the keys. I got in touch with my Godfather up in New York and he loaned me the money once I got the number of the keys and took me to a locksmith where I was able to

have keys made.
Q. Okay. Were you able to get the car home?
A. Yes, I was. Also, when I got back into the car, money that I had had been taken by this fellow and the cocaine was gone, too.
Q. What did you do with the car when you got back home?
A. When I got back home, I took the car back to Ruffu and there was a deposit that we originally had put down, the $300, so that paid for the time that I was out and I got the refund from that. I stopped off in Atlantic City and I saw a couple of people and I came on home.
Q. Did the police come see you?
A. Yes, they did. They were at my house when I got there. When I came home.
Q. Did they question you?
A. Yes, they did. They told me they wanted to question me.
Q. Did you tell them what you've told us here today?
A. Yes. They took me down and they spoke with me and I made a statement.

Q. Same thing you've told us here today?
A. Yes, sir.
MR. TALASNIK: Thank you, no further questions, your Honor.
CROSS-EXAMINATION
BY MR. DAVIS:
Q. Mr. Chambers, prior to this incident, you had known Rick for approximately how many years?
A. Oh, I'd say about since around '79, '80.
Q. So you've known him about seven or eight years?
A. Yes.
Q. And you've indicated that prior to this incident, you hadn't seen him for a while?
A. Well, I had seen him a few weeks before that, but I hadn't been seeing him on a regular basis. He would pop up every now and then.
Q. Did he know where you worked or did he just happen to walk by and you happened to be there?
A. I take it he either knew where I

worked at or he saw me working there.
Q. How long had you been working there?
A. For a little over a year.
Q. A little over a year?
A. Yes, sir.
Q. You say he at that point or that morning around six o'clock in the morning asked you to drive him?
A. Yes, sir.
Q. Now, did he tell you where he wanted you to take him?
A. At that point?
Q. Yes.
A. It was basically out of town.
Q. Now, you've indicated you were a chauffeur or you were a limousine driver?
A. Yes.
Q. When people request you to drive them, do you get the details of where they want to go and what time they want to leave and how long you're going to have to wait and how long the trip would take you?
A. Usually you get some sort of instructions on where the people want to go or it is written down for you.

Q. And it is based on -- let me ask you this way.

What do you base your fee on?

A. See, personally, if I do a personal job for somebody, I usually charge them like around $25.00 an hour, you know. Now, with the casino, it is somewhat different.

Q. An independent job, how do you charge?

A. As I said, I usually charge $25.00 an hour.

Q. And if a person walks up to you and says I want you to take me to New York, how do you calculate that job?

A. Well, usually that will usually run anywhere from 150 to 200, plus the tip.

Q. Plus a tip. That depends on the person you take. If he wants to tip you, he does. If he doesn't, he doesn't?

A. Right.

Q. You don't say $25.00 an hour plus tip?

A. You never approach the tip.

Q. You always say $25.00 an hour?

A. Yes.

Q. If I ask you to drive me to New York, you say $25.00 an hour and you indicated it

will cost about $200?
A. Yeah. I usually come up with like a set number, set fee.
Q. How much time do you usually anticipate a run to New York taking you?
A. Well, it all depends on if they want me to just take them up there and leave them or if they want me to take them up and drive them around or if they want me to take them up and bring them back.
Q. What did Mr. Highlander tell you he wanted to do?
A. Basically to just drop him off.
Q. Just drive him up to New York. Did you know where you were going to take him into New York?
A. Not exactly.
Q. Did he tell you what he wanted to do when he got to New York?
A. Not exactly.
Q. Did he tell you he wanted you to -- he wanted to leave town?
A. Yes.
Q. And you were to take him up, drop him off and come back?

A. Yes.
Q. When he told you what he wanted to do, did you caculate how much time this is going to take you?
A. Well, the figure that he had mentioned to me was satisfactory, so I didn't even have to go into that.
Q. Now, this figure of $300 took you from six o'clock in the morning until 12:00 o'clock at night for you to finish your job?
A. No, sir. I didn't start at 6:00 because I didn't get off from my job until 8:00.
Q. Took you from eight o'clock in the morning until 12:00 o'clock at night?
A. No, sir. I didn't meet him until 9:00.
Q. Nine o'clock in the morning until 12:00 at night?
A. Well, whenever the job started. He had mentioned the fee and it was satisfactory and I told him that I would do it.
Q. When did the job start?
A. In terms of length of time, that I didn't even notice.

Q. Well now, when you met him at nine o'clock, you've indicated that you went where?
A. To the Madison House.
Q. And when you went to the Madison House, what transpired?
A. Well, as I said, he was trying to see about his check.
Q. Now, at the time that he met you at six o'clock in the morning, did he tell you that he was hiring you to drive a car so he could use it as a getaway car because he intended to hurt someone?
A. No, sir.
Q. Did you have any inclination at that time that that's what you were going to be doing?
A. No, sir.
Q. At nine o'clock when you met him at the Madison House and commenced talking to him, did he ever indicate that to you?
A. No, sir.
Q. Did he ever indicate his intentions at all to you up until nine o'clock?
A. No, sir.
Q. Okay. Now, you indicated when you

then initially went to the Madison House, you were unable to or he, Rick, was unable to get the check?

A. Yes.

Q. Initially. Then you guys went somewhere on the boardwalk and went to a bar and had a couple of drinks?

A. Yes, sir.

Q. And during these conversations, you've indicated to Mr. Talasnik that Mr. Highlander was complaining to you about his girlfriend?

A. Yes, sir.

Q. Was he telling you how much he loved her?

A. Yes, he had stated that.

Q. Did he tell you what he thought she had done to him?

A. Yes, he was going into that.

Q. Did he indicate to you that he thought that he had been wronged by the young lady?

A. Yes, sir.

Q. Did he appear to be distraught and upset?

A. Yes, he was uptight about that.

Q. Now, at that time, did he indicate to

you that you were going to drive down to Margate or wherever so he could kill this girl?

A. No, sir.

Q. Did it ever enter your mind at that point that Mr. Highlander had any intentions on hurting anyone that day?

A. If it had, I wouldn't have driven him.

Q. I will ask you the question again. You can say yes or no.

Was it ever indicated to you at any time that Mr. Highlander had any intentions on hurting or shooting Gloria Simonelli?

A. No, sir.

Q. Now, you've indicated that you continued to remain in Mr. Highlander's company until you went to Rufus Duff's house?

A. Yes, sir.

Q. And when you went to Mr. Duff's house, you were drinking and Mr. Highlander was drinking?

A. Yes, sir.

Q. What time did you begin your day? You say you got off eight o'clock in the morning. What time did you commence work?

A. I work 12:00 to 8:00.
Q. So had been up from 12:00 o'clock that night at least, at least you started work at 12:00?
A. Yes, sir.
Q. And you stayed up from 12:00 o'clock the night before all through the day?
A. Yes, sir.
Q. When you went to Rufus Duff's house, you indicated that Mr. Duff had a gun in the house.
A. Yes, sir.
Q. Before you entered the premisis, did you know the gun was there?
A. No, sir.
Q. Did Mr. Highlander ever indicate that a gun was there?
A. Did he indicate?
Q. Before you guys went in.
A. I don't believe he did, sir.
Q. When you saw the gun, you said Mr. Highlander handled it and Mr. Rufus handled it and you handled it. Is that true?
A. I looked at it, sir.
Q. You looked at it. At that time, was

there ever any indication that this gun was going to be used in anything?
A. No, sir.
Q. At that time, you thought Rick Highlander was going to do what at that point? What did he tell you he was going to do at that point for your services?
A. I was going to drive him out of town.
Q. You further indicated he had conversations with Rufus?
A. Yes, sir.
Q. And you said he had conversations with Rufus about turning over work?
A. Yes, sir.
Q. In fact, wasn't it a conversation -- did you know what the relationship was between Mr. Highlander and Rufus was?
A. Not really. This was the first time I met Rufus.
Q. As you sat down -- you don't know him as Mr. Duff -- but did it appear that Rufus was an employee of Mr. Highlander?
A. Yes, sir.
Q. Mr. Highlander indicated to you this was one of the reasons he went to Rufus'

house, was to pay him?
A. Yes.
Q. Wasn't it also a fact that this conversation between Highlander and Rufus revolved around the fact that he was indicating to Rufus what jobs he wanted him to do in the next couple of days?
A. Yes, sir.
Q. And isn't it also a fact that he was telling him what jobs that he wanted him to keep up because he was going to leave town for a few days?
A. Yeah, I believe that was part of his conversation, too.
Q. During this conversation, he even indicated to Rufus where he was going.
A. Excuse me?
Q. He also told Rufus where he was going to go.
A. As far as where?
Q. When he left town.
A. I don't know.
Q. You don't recall that?
A. No, sir. I never heard him tell him where he was going to go because I didn't know

where he was going to go. And I was taking him.

Q. Well, you knew he was going to New York.

A. Well, that much I was pretty sure of, but I didn't know where at in New York or where from there or what.

Q. Now, at this stage of your connection with Mr. Highlander, about what time of day was this when you were at Rufus' house?

A. I think it was around 10:30.

Q. 10:30?

A. 10:30 towards 11:00, somewhere around there.

Q. That was your second stop basically?

A. From the Madison House, we stopped off at a complex, we tried to borrow that money and then we went to the bar and then we went to Rufus' house.

Q. And you also indicated you commenced to drink at Rufus' house?

A. We had beer there, yeah.

Q. Did Mr. Highlander at this time appear to be intoxicated to you?

A. No more so than myself.

Q. Now, while you were in Rufus' house, did Mr. Highlander speak to you with regard to Gloria Simonelli?
A. He might have mentioned her as he was talking in general.
Q. But at Rufus' house his main topic of conversation was not Gloria Simonelli?
A. They were basically talking about the work he wanted to pass off.
Q. Just conversation basically was to Rufus about the job he wanted Rufus to do while he was out of town for the next few days?
A. This is the knowledge that I have, right.
Q. That's all we're asking you.
When you left Rufus' house, where did you go?
A. When we left Rufus' house, Rufus drove us back over to the job so he could pick up his check.
Q. And that's the Madison House?
A. Yes, sir.
Q. And did you pick up or did Mr. Highlander pick up the check, to your

knowledge?
A. Yes, he did, to the best of my knowledge.
Q. Now, during the trip from Rufus' house to the Madison House, did Mr. Highlander indicate to you in any fashion that he wanted to do harm to Gloria Simonelli?
A. Was going to, wanted to, what are you saying?
Q. Going to.
A. No, sir.
Q. Now, after Mr. Highlander obtained the check, then you indicated he went to a store somewhere down by the high school in Atlantic City?
A. Yes, sir.
Q. I guess you don't know who owned the store?
A. No, I don't.
Q. And while Mr. Highlander went in the store to do what he had to do, you did what?
A. I was outside in the car.
Q. You were outside in the car?
A. Yes, sir.
Q. Now, from the trip from Rufus' house

to the store in Atlantic City, did Mr. Highlander at that time ever indicate to you that he was going to do any harm to Gloria Simonelli?

A. No, sir, not going to.

Q. Now, when he went into the store, you remained in the car?

A. Yes, sir.

Q. Okay. Isn't it a fact you remained in the car and you continued to drink with Rufus' nephew?

A. Yes, sir.

Q. And how long did it take Mr. Highlander to return?

A. Well, as I said, he left with a fellow. They went off and they were gone about 20, 25 minutes, something like that.

Q. And then they returned?

A. Yes, sir.

Q. And at that point you left there to go rent a car?

A. Yes, sir.

Q. And you've indicated to Mr. Talasnik that you rented that car in your name?

A. Yes, I did.

Q. Isn't the reason that you rented the car in your name is that you're the one who had a credit card?
A. I didn't have a credit card. No one had one.
Q. That you had the license?
A. Yes, I had a driver's license.
Q. And Highlander didn't have a license?
A. Not to my knowledge. It was suspended or something of that nature.
Q. And that was the identification that was used to rent a car?
A. Yes, sir. I was driving the car.
Q. And you were driving the car?
A. Yes, sir.
Q. And Mr. Highlander paid for the vehicle?
A. Yes, sir.
Q. Now, after you left Ruffu, where did you go?
A. When we left Ruffu -- okay, that's when we went to pick up the warm-up suits.
Q. Yes?
A. We went to Herman's Sports Store.
Q. Herman's, and then you went from

Herman's to where?
A. From there we went to the restaurant -- I mean, out to around Pier 4.
Q. Crab Trap?
A. Yes, sir. In between then, on the way there, we stopped off at a 7-11 and picked up some razor blades.
Q. During that period of time, from Ruffu out to buying the jump suits or whatever type of suits you had until you went out to Pier 4, did Mr. Highlander at that time speak in terms of Gloria Simonelli?
A. Yes, he had spoke of her.
Q. And was that conversation at that time indicating to you the hurt that he was feeling because of what he alleged that she had done to him?
A. Yes, he had spoken of that.
Q. And again, as you have indicated to Mr. Talasnik, you really didn't want to hear any of it, did you?
A. No, sir, I really didn't.
Q. Your main goal that day was to get to New York, come back, make your $300 and get on with the next job?

A. Yes, sir.
Q. Now, after you had eaten and showered at Pier 4, then you left and went where?
A. Okay. When we left there, that's when we drove back through Margate.
Q. And do you know why you went through Margate?
A. Do I know why?
Q. Yes.
A. He was giving me instructions. He was telling me which way to go.
Q. Did he tell you why he wanted you to go through Margate?
A. He said he wanted to see if he saw his car, the car he had bought for her.
Q. Did he tell you why he wanted to see this car?
A. Yeah. Because he wanted to locate her, wanted to see her before he went.
Q. Did he say why he wanted to see -- what did he want with her?
A. He said that he felt that she shouldn't just be left thinking she got away with everything and if nothing else, he wanted to scare her.

Q. And he wanted to talk to her?
A. Well, talk to her, scare her, whatever.
Q. But he never indicated to you that he was going to kill her, did he?
A. No, sir.
Q. Now, as you drove through Margate, this is around 4:30?
A. I'm not sure of the exact time, sir, at this point.
Q. Do you recall making the statement to the police when you had gotten back from New York?
A. Do I recall making the statement? Excuse me. Would you say that again?
Q. Do you recall making a statement to the police on April 29th of 1988?
A. Yes, I made a statement.
Q. Do you recall telling the police that you rode by the Greenhouse approximately 4:30?
A. More or less, that's probably what I did say, sir. See, at that time we're talking about something that is almost 13 months ago. At that time everything was very fresh in my mind and you keep going over the times with me

and I'm trying to get them as correctly as possible.

Q. I understand. That's why I'm referring to your statement.

A. Okay.

Q. You've indicated to the police that at that time it was around 4:30 that you drove by the Greenhouse?

A. Yes.

Q. Was it light outside at that time?

A. Yes, sir.

Q. Did anything happen or what happened?

A. No, nothing happened other than the time he saw the car, he spotted the car.

Q. He spotted the car?

A. Yes, sir.

Q. And do you know where the car was? Did you know where the car was located?

A. Did I know?

Q. Yes. Or did he tell you?

A. I know what he told me. You see, I didn't know what the car was, what it looked like, what color it was. All I knew was what he was telling me about it. He was looking for the car.

Q. What did he tell you when he saw the car?
A. He said that's the car he had bought for her.
Q. Did he indicate when he said that's the car, did he indicate which car he was talking about?
A. I know it was a black car.
Q. Now that you noticed a black car and he indicated it to you, do you know where it was located?
A. At the bar.
Q. Was it on the street, parking lot or where?
A. In the parking lot.
Q. Now, when he said there's the car, what did you do?
A. We didn't do anything.
Q. Did you stop, did you circle the block or what?
A. I think we circled one time.
Q. And then --
A. And then we kept going, went into Atlantic City.
Q. Did he give you any indication at that

time that he intended to harm Gloria Simonelli?

A. No, not actually.

Q. And at that point you continued to go to Atlantic City?

A. Yes, sir.

Q. And you went to Piggy's?

A. Yes, sir.

Q. What is Piggy's?

A. It's a bar.

Q. Where is it located?

A. On the corner of Artic and North Carolina.

Q. Now, when you arrived at Piggy's, basically all you did was drink?

A. Yes, sir.

Q. And was Mr. Highlander drinking?

A. Yes, sir.

Q. And how long did you stay at Piggy's?

A. I would say about an hour, hour-and-a-half, somewhere around there. 90 minutes.

Q. As you left Piggy's, did Mr. Highlander appear to be intoxicated at that time?

A. Well, we both were feeling -- we had been drinking.
Q. The question is, did Mr. Highlander --
A. Was he drunk or intoxicated you are saying?
Q. Did he appear to be intoxicated?
A. We were both semi-intoxicated but neither of us were drunk.
Q. He appeared to be semi-intoxicated?
A. Yes, sir.
Q. And when you left there, you indicated you went to your friend Fat Neck's house?
A. Yes.
Q. Where did he live? Right across in the hi-rise?
A. Yes, sir.
Q. When you went to Fat Neck's house, you did what?
A. We drunk some more. We had some cocaine.
Q. Didn't you also had some cocaine and some heroin also?
A. We did do some drugs, sir.
Q. How long did you remain at Fat Neck's house?

A. That was about another hour-and-a-half or so.
Q. Another hour-and-a-half or so?
A. Yes, sir.
Q. During that hour-and-a-half you were drinking and using some drugs?
A. Yes, sir.
Q. Now, at the end of that hour and a half, did Mr. Highlander appear to be high?
A. Oh, we were high, yes.
Q. Were you high then?
A. Yes, sir.
Q. And that was about what time?
A. When we got ready to leave, you mean?
Q. Fat Neck's house, yes, sir.
A. I guess around 8:30 or somewhere around there. Eight o'clock, 8:30, somewhere around there.
Q. And you went from Fat Neck's house around 8:00 to 8:30 to where?
A. We left there, stopped back around Rufus' house.
Q. Okay. And you said that Mr. Highlander went into Rufus' house and it took him about 10 minutes?

A. About.
Q. Isn't it a fact he wanted to go into Rufus' house to pay him the final $50.00 he owed him?
A. I don't recall that, sir. I don't recall him saying anything about paying him anything he owed him because he paid him before we left, before we -- when we were at the rent-a-car place. I know he paid him money. I don't know what transaction went on other than he paid him money, so I thought he was straight with that.
Q. So you don't know why he went in, then?
A. To pick up his belongings. He was getting ready to leave town.
Q. You say he came out with a brown paper bag. One thing he came out with was the brown paper bag?
A. Yes, sir.
Q. And you knew or he you had seen the brown paper bag before?
A. Yes, sir.
Q. And you indicated to Mr. Talasnik, you knew what was contained in this brown paper

bag was the 357 Magnum?
A. It was the same bag I saw before.
Q. Did you know what was contained in that bag?
A. Well, yes, I was under the impression that was the bag that had the pistol in it, especially when he stuck it up under his jacket.
Q. Now, Mr. Highlander came out of Rufus' house, as you stated, and he had a bag that you've indicated that you recognized because you had seen it before and you assumed that a gun was in that bag --
A. Yes, sir.
Q. -- and he got into your vehicle that you were driving, that you had rented and did you say anything to Mr. Highlander, like hey, what do you have in that bag?
A. Sir, he told me he was leaving, he was going out of town. I knew he had the gun. He was taking the gun out of town with him. That was part of his personal effects.
Q. Did you know or did you say anything to him about that gun?
A. About him having it?

Q. In your car.
A. Just that I didn't want him fiddling around with it because I didn't want a gun in the car.
Q. The question was, did you say anything to him about having that gun in your car?
A. I don't exactly know how to answer that, sir.
Q. When he got into the car, you knew or at least you assumed he had a gun, didn't you?
A. I knew he was going to get his personal effects. I was taking him out of town. I knew his gun was part of his personal effects.
Q. When he got into the car, did you know he had a gun?
A. When he got back in, I assumed he did, yes.
Q. In fact, you told the police that you knew he had a gun, didn't you?
A. When he got back in the car?
Q. Yes.
A. Yes, sir, I said I assumed he had the gun.
Q. It was past assumption. You knew he

had the gun.

A. I said I assumed because I didn't see him come out with the gun in his hands. He came out with a bag. It was the bag that I recognized had the gun in it and I assumed he had the gun.

Q. Now, at that point --

MR. DAVIS: Could I have this marked for identification?

THE COURT: Yes. Why don't we take a brief recess at this point. You may mark that as D-7. What is the date?

MR. DAVIS: It is April 29, 1988, and it is Mr. Chambers' statement taken by the Major Crime Squad.

THE COURT: D-7.

Take a brief recess.

(Above-described statement was marked Exhibit No. D-7 for identification)

(Whereupon, the jury leaves the courtroom)

THE COURT: We will take a five-minute recess. Mr. Chambers, you should not discuss the substance of your testimony with anybody during the recess.

SHERIFF'S OFFICER: All rise.

(Brief recess)

(Jury enters the courtroom)

THE COURT: All right, Mr. Davis, you may proceed.

MR. DAVIS: Thank you.

BY MR. DAVIS:

Q. The last thing you indicated, Mr. Chambers, when you saw this bag, you assumed it was a gun?

A. Yes, sir.

Q. And from that point, you were directed to drive Mr. Highlander to Margate?

A. Yes, sir.

Q. Now, did you know where you were going to Margate at that point?

A. Well, he said he wanted to see her before he left.

Q. Did you --

A. If possible.

Q. If possible. And you drove back to what, the Greenhouse?

A. As I said before, I believe we stopped by her house where she lived at first before

we swung by there.
Q. And the purpose of going by her house was to look for her car or what?
A. Yes, sir.
Q. And you or Mr. Highlander didn't see it?
A. Right.
Q. Then you drove by the Greenhouse?
A. Yes, sir.
Q. And, as you indicated to Mr. Talasnik, when you drove up in the parking lot Ms. Simonelli was exiting the premisis?
A. No, sir. I said the car was still there and we drove through the parking lot very slow and as we got halfway through there, that's when the young lady came out with the gentleman.
Q. To your knowledge, did you have any knowledge that she was going to be coming out of that door at that time?
A. No, sir.
Q. From talking to Mr. Highlander, did you have any knowledge that she was going to be coming out that door at the time that you drove through the parking lot?

A. I didn't get that impression, sir.
Q. Now, did Mr. Highlander plan with you to go down there and kill Gloria Simonelli?
A. No, sir.
Q. When he got out of the car and did what he did, was that a -- could I say that was a complete surprise to you, Mr. Chambers?
A. Yes, sir.
Q. And then you left from there and you indicated you went to New York?
A. Yes, sir.
Q. And for whatever reason, you sold the gun.
A. Yes, sir.
Q. And that's the last time you saw Mr. Highlander?
A. Yes, sir.

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

THE COURT: Mr. Talasnik?

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Just a couple of questions, Mr. Chambers.

In response to some of the questions

by Mr. Davis, getting now up to the point where you and Mr. Highlander are at Piggy's --

A. Yes, sir?

Q. -- you were asked about your condition and Mr. Highlander's condition. And I believe you indicated that you were partially intoxicated, but not drunk.

A. Yes, sir.

Q. Now, what does that mean?

A. That means that you're feeling a little light, a little tipsy, but you're still in control of what you're doing.

Q. Still in control of what you're doing?

A. Yes, sir.

Q. Then when you were asked about going to your friend's house and ingesting some drugs, you indicated that after ingesting the drugs, referring to yourself and Mr. Highlander, we were high.

A. Yes, sir.

Q. What does that mean, we were high?

A. Well, it meant that we were feeling good, you know. Not out of it where you don't recognize who you're with or what you're doing. Just with the way you're feeling,

things just seem to come easy.
Q. Were you still in control?
A. Yes, sir.
Q. Did you conclude that Mr. Highlander was still in control?
A. Well, he was still telling me what to do, yes, sir.
Q. Now, the reference to apologizing to you for having gotten you into this --
MR. DAVIS: I object. That was outside the cross-examination.
MR. TALASNIK: Withdrawn.
THE COURT: Sustained.
MR. TALASNIK: I withdraw the question.
No further questions.
MR. DAVIS: No further questions.
THE COURT: You may step down, Mr. Chambers. Thank you very much for coming, sir.
(Witness excused).
THE COURT: Mr. Talasnik, you may call your next witness.
MR. TALASNIK: Lisa Ginsberg.

LISA GINSBERG, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Lisa, will you tell us in what town you now live?

A. Atco.

Q. And where do you now work?

A. I work in Cherry Hill.

Q. I want you to think back to 1988, the first part of 1988, and ask you where you were employed back then.

A. At the Atlantic Palace.

Q. Could you sit forward and speak into the microphone for us and answer that question again?

A. At the Atlantic Palace.

Q. What is the Atlantic Palace?

A. It's a condominium hotel. I worked for the developer, who developed and sold the building.

Q. Where is the Atlantic Palace located?

A. New York Avenue and the Boardwalk.

Q. So you can walk down the Boardwalk and enter Atlantic Palace at the Boardwalk?

A. Right.
Q. Would you have been employed there during the month of April 1988?
A. Yes.
Q. Did you know through the course of your employment there a fellow by the name of Rick Highlander?
A. Yes.
Q. Is the fellow that you know as Rick Highlander in the courtroom today?
A. Yes.
Q. Can you identify him, please?
A. He's sitting right there.
THE COURT: Pointing to the defendant.
Q. What kind of contact did you have with Mr. Highlander in your capacity with Atlantic Palace?
A. He had come in to do some carpentry work in units. I was a secretary there, so we had a business relationship. I would do some typing of the different things he needed to do.
Q. Did you ever do typing for him in the form of proposals for jobs he was going to do

someplace else?
A. Yes.
Q. Do you ever remember doing a proposal for him for Madison House?
A. I believe that was one of the places, yeah.
Q. Okay. Now, I want to direct your attention to Monday morning, April 25, 1988, and I ask whether you were working that morning.
A. Yes, I was.
Q. About what time did you come to work?
A. Nine o'clock.
Q. Sometime after coming to work on Monday morning, do you remember seeing Mr. Highlander?
A. Yes, I did.
Q. Would you tell us about that?
A. He had come in. I think it was before lunchtime. And asked if he could leave his briefcase in my office and he would pick it up later.
Q. Did he do anything else while he was there?
A. He asked to borrow $10.00 so he could

go to the bar before he got his check and then he left.

Q. Did he ask that of you?

A. Yes.

Q. Did you hear him ask it of anyone else?

A. I overheard from down the hall he might have asked one of the other girls at the office.

Q. Do you recall now at that time when Mr. Highlander came in, left his briefcase and asked you for money so he could go to the bar, do you recall if anyone was with Mr. Highlander?

A. Yes. There was another gentleman.

Q. Do you recall if he was white or black?

A. He was black.

MR. TALASNIK: Thank you, no further questions.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Ms. Ginsberg, Mr. Highlander borrowed $10.00 from you?

A. No. He asked to, but I didn't have it.
Q. But he left his briefcase with you?
A. Right.
Q. And what did he indicate?
A. He said he would pick it up later during the day.
Q. That's about the extent of the conversation?
A. Yes.

MR. DAVIS: That's all I have.

THE COURT: Mr. Talasnik.

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

(Witness excused)

MOSHE SHINAL, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. TALASNIK:

Q. Mr. Shinal, where do you work?
A. I own a little deli on -- in Atlantic City on Ventnor Avenue.
Q. Is that deli somewhat close to the high school in Atlantic City?
A. Yes, sir.

Q. How long have you owned that deli?
A. Nine years.
Q. During the course of owning that deli, did you have a customer by the name of Rick Highlander?
A. Yes, sir.
Q. Is the fellow that was your customer Rick Highlander in the courtroom today?
A. Yes, sir.
Q. Can you point him out for us, please?
A. Yes, sir.
THE COURT: Pointing to the defendant.
BY MR. TALASNIK:
Q. Now, Mr. Shinal, how frequently would Mr. Highlander come into your store?
A. Well, in the beginning he used -- I used to own two stores in the same area. I used to have a store, Moshe's mini market, where I made sandwiches, and I had Dover supermarket, which is the next block. When he was living in my neighborhood, he was living -- my store is around the 3900 block and I think he was living in the 4000 block. He used to come more often. Then when he lived

-- can you understand me?
Q. Yes.
A. When he left the area, he was coming like once or twice a week to my little mini market to buy his lunches.
Q. Mr. Shinal, in addition to being a customer at your store and coming to buy lunches or groceries, did you ever cash checks for him?
A. Yes, I did.
Q. Was that a fairly routine practice for you to cash checks for him?
A. For a few times, yes.
Q. Do you ever remember having any conversations with Mr. Highlander about some problems he was having with a girlfriend?
A. Well, yes, I did. When he was -- when he used to come shop in my store, he used to tell me his problems with his girlfriend. The girlfriend when he used to live in the neighborhood and then when the new girlfriend that he had, the last girl, I think her name was Gloria.
Q. The last girl you knew about was Gloria?

A. That's what I knew, Gloria.
Q. Did he ever talk to you about problems he had with Gloria after the two of them split up?
A. Yes, he did.
Q. What did he tell you?
A. He told me that he had a problem, I think something happened between the two of them and she's suing him, taking him to court and he was trying to settle this. He wasn't allowed to be next to her or to see her and he was trying to settle this without going to court with her.
Q. Did he ever say what he would do if he couldn't settle it and not have to go to court?
A. Well, Rick had a way of I guess to play -- his way was to play the bigshot. The slang he used to say, I will beat her, I will kill her. But that's the way he was talking about anyone or everyone. So I never took it as a serious saying, that he would really kill or something like that.
Q. Although you didn't take it seriously, he did say he was thinking of killing her?

A. He did say it.
Q. Did he say it more than once?
A. I can't remember. He said it probably a couple of times.
Q. Okay. Did you ever talk to him or did he ever make references to his owning or having access to a gun?
A. No -- well, owning it? I can't remember. He probably did. He probably did, but I never saw him with a gun, if that's what your question is.
Q. You never saw him with a gun?
A. No, never saw him with a gun.
Q. Did he ever say anything about his ability to get a gun?
A. I think, yes, he did.
Q. Yes, he did?
A. Yes.
Q. Did he ever talk to you about whether you were aware of any places that somebody could go, some places out of the country where they couldn't get you?
A. Yeah. One time he did stop and say he will go to South Africa, South American, whatever, I can't remember exactly where, and

a place if he runs away, he would never come back to the United States. They wouldn't ship him back to the United States.

Q. Okay. I want you to now think about the day, Monday, April 25, 1988.

A. Right.

Q. Do you remember seeing Rick Highlander that day?

A. Yes, I did.

Q. Were you working at your store that day?

A. Yes, I was working in the store that day. I was there by myself.

Q. About what time of day did you see Rick Highlander?

A. I saw Rick Highlander, I remember it was my busy time, around 12:30, something like this. 12:00, 12:30 in the afternoon. Rick Highlander stopped and he wanted to pay his bill and he wanted to cash a check. Exactly I don't remember how much was the check. Do you want me to keep telling you what happened or do you want to keep asking me questions?

Q. I'll keeping asking you questions.

THE COURT: Good idea.

Q. When Mr. Highlander showed up at around 12:30, was he alone or was he with other people?
A. When he stopped in my store, he was by himself. He was alone. A car was waiting for him right in front of my store, where I have a loading and unloading zone in my store, but I didn't look in the car and I don't know who was there. But he was with the car. Again, when he stopped in the store, he was by himself.
Q. How did you know that the car that you're describing was waiting for him?
A. Well, I found out about this after when we came -- we went to the bank. When we came back, he jumped from my car and he went to the other car.
Q. All right. Let me take it one step at a time, though. When Rick walked into the store, he was alone?
A. Yes.
Q. And did he have a check with him?
A. Yes.
Q. What did he ask you?
A. To cash it for him.

Q. Do you remember if it was a lot of money or a little bit of money?
A. A lot of money? For me? 13 hundred dollars? For a working man, I guess it's a lot of money.
Q. And you think it was somewhere in that neighborhood, $1,300?
A. Something like this, yes.
Q. Were you able to cash the check for him right there?
A. Not in the store, no. I had to go to -- the check was -- happened to be from the same bank which I deal with, First Fidelity. I decided that I will take the check right to the bank and find out if the check is good, I will cash the check in the bank and give him his money.
Q. What about your store?
A. I closed -- I locked the store up.
Q. Okay. Where did you take Mr. Highlander in an effort to cash the check?
A. I took him to Margate, to the First Fidelity in Margate.
Q. Did you tell Mr. Highlander that you were going to go to a bank in Margate?

A. Yes, I did.
Q. How did he react to that?
A. He was very nervous, didn't like the idea.
Q. Did you take him to Margate with you?
A. Yes, I did.
Q. Were you able to cash the check?
A. Yes.
Q. What happened with the money after you cashed the check?
A. He owed me for my bill. I think it was $200 or $300. I took whatever he owed me and I gave him all the rest of the money.
Q. What did you do with Mr. Highlander then after you cashed the check?
A. I took him back to my store, I went back to my business and he went his way.
Q. Now, when he got out of your car, did you see where he went?
A. He went into -- out of my car?
Q. Yes.
A. He went, if I remember correctly, he went to the car that was waiting for him.
Q. Were there people in that car?
A. I don't remember. I think -- I think

one person was there -- I don't remember. I didn't really pay too much attention to this car.

Q. You just know he got into another car?

A. I know he got into another car.

Q. Was there somebody else driving at least?

A. Yes.

Q. Do you remember whether the somebody else driving was white or black?

A. No.

Q. Now, do you remember anything about how Mr. Highlander was acting in your company?

A. Yes. He was very nervous. He was not himself, as I know him usually. He didn't want to go with me to Margate. I didn't understand why. I said, you're not driving, I'm the one driving. He felt he had a few drinks in him and I said you don't have to worry, I will go to the bank. I won't cash the check until I make sure the check is good. Of course, he didn't have a choice. Otherwise I wouldn't cash it for him. He got in the car, we went to the bank and we cashed the check and that was that.

Q. That was the last time you saw him?
A. Yes.
MR. TALASNIK: Thank you, no further questions.
THE COURT: Mr. Davis?
CROSS-EXAMINATION
BY MR. DAVIS:
Q. Mr. Shinal, directing your attention to that date of April 25th when Mr. Highlander came to your store, wanted to cash the check, prior to that time, did you know that Mr. Highlander was having problems with his girlfriend?
A. Yes.
Q. And you indicated that he did not want to go to Margate with you to cash this check?
A. Right.
Q. Now, had he gone to Margate with you on previous occasions to cash checks?
A. No.
Q. No?
A. No.
Q. Now, did he tell you why or did you know why he didn't want to go to Margate?
A. No. He really didn't tell me, no. I

didn't know why he didn't want to go. I figured right now I think he just didn't go because I guess he didn't want to meet or see somebody that he wasn't allowed to be next to her, but I don't remember him telling me why he didn't want to go on this day.

Q. Did you know where he lived before he broke up with Gloria?

A. No. Wait. Did I know where he lived before -- not in my neighborhood. That he was living with Gloria? Probably he did tell me this. I don't remember. He probably did tell me he lived with her.

Q. Now, did you have contact with Mr. Highlander while he was living with Gloria?

A. A few times, yeah.

Q. Did you know her personally?

A. No.

Q. Had you ever seen her?

A. She may have stopped in my store one time. I saw her one time. She was sitting and waiting in the car for him while he was doing his shopping in my store. I don't remember talking to her -- I wouldn't know her, no.

Q. After his breakup, did you have conversations with him concerning how he felt about Gloria?
A. Yes, I did.
Q. And what did he indicate to you?
A. That he was hurt when she left him.
Q. He was what?
A. He was hurt. He missed her, he loved her or whatever. He was -- he wanted to be back with her, that's what I understand.
Q. Now, you asked Mr. Talasnik or indicated to Mr. Talasnik he said he was going to kill Gloria once or twice?
A. Right.
Q. Were these conversations, were they in a serious vein, non serious --
A. Non serious vein.
Q. Non serious vein?
A. Non serious vein.
Q. And when you were talking about -- you also indicated to Mr. Talasnik you spoke to him about obtaining guns or he spoke to you about guns. Was this in any fashion connected with Gloria Simonelli?
A. No, not at all.

Q. He also indicated to you that he would like to go to South American or South Africa somewhere and not come back. Was this in the same vein with Gloria Simonelli?
A. No, not at all.
Q. Different conversations altogether?
A. Different conversations, right.
Q. And the last time you saw him was the time that you cashed the check and he paid you what he owed you?
A. Yes, sir.
Q. Did he indicate to you at that time that he was going to leave the area or anything?
A. No.
Q. Now, on that same day of April 25th, did you indicate to him that you would go speak to Gloria on his behalf?
A. Yes, I did.
Q. What was his response to you in making that offer?
A. I think he said no to me, it wouldn't help, but I did say let's see if -- he was very upset, he was scared, he probably thought he would have to go to jail and I said if you

want me, I go talk to the girl. I don't even know her, but I will talk to her and see if I can help you in some way. Again, he was pretty fairly good customer in my store and I didn't have no problems with him and figured if I can help him, I will gladly do it.

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

THE COURT: Mr. Talasnik.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Shinal, you are indicating you offered to talk to Gloria for Rick?

A. For Rick, yes.

Q. And he said no, don't bother?

A. Right.

Q. Did you also indicate that he had some concerns about going to jail?

A. Yes.

Q. Tell us about that.

A. Well, I have to remember. We're talking about a year ago. But he did -- I guess they had a fight between the two of them and I think, as I understand, he hurt the girl and he was afraid that if she will take him to

court, he will have to go spend some time in jail.

MR. TALASNIK: No further questions, thank you, your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: No questions, your Honor.

THE COURT: Thank you, Mr. Shinal, you may step down.

(Witness excused).

MR. TALASNIK: The State calls Lanette Boyle.

LANETTE BOYLE, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. TALASNIK:

Q. Ms. Boyle, where do you work?

A. Ruffu Ford.

Q. How long have you worked there?

A. Approximately five years.

Q. What kind of work do you do at Ruffu Ford?

A. I'm the rental manager.

Q. How long have you been the rental manager?

A. About three years.
Q. Would you have been the rental manager on Monday, the 25th of April, 1988?
A. Yes.
Q. And do you have a recollection of being involved in some rental transactions that day?
A. Yes.
Q. I'm going to show you a document that has earlier been marked as S-14 for identification. I would like you to look at it and tell me if you recognize what it is.
A. This is the rental agreement that I filled out.
Q. What is it about that document that causes you to remember that that's a rental agreement that you filled out?
A. I recognized the handwriting.
Q. What kind of information is contained on there?
A. The customer's name, address, telephone number, place of employment.
Q. Do you recognize that photocopy as accurately depicting the original agreement that you prepared that day?

A. Yes.
Q. What car is involved in that rental agreement?
A. It's a 1988 Ford Taurus.
Q. And to whom was it rented?
A. Edward Chambers.
Q. What kind of a procedure do you follow before letting one of your cars go off with somebody?
A. You either have to have a major credit card, valid driver's license or your driver's license and at the time we were doing rentals on a cash deposit basis.
Q. Do you have a recollection of dealing with an Edward Chambers on that transaction?
A. Yes.
Q. And did you ask him to present these various credentials that you've said you relied upon?
A. Yes.

MR. TALASNIK: Your Honor, I have a document I would like marked for identification.

THE COURT: S-49.

(Below-described document marked

Exhibit No. S-49 for identification)
BY MR. TALASNIK:
Q. I'm going to show you a document which has now been marked S-49 for identification. I would like to ask you whether you recognize what it is.
A. It's a copy of Mr. Chamber's driver's license and a Golden Nugget identification card.
Q. And does that appear to be an accurate photocopy of the documents that Mr. Chambers presented to you in order to rent the car on that Monday, the 25th of April?
A. Yes.
Q. Now, when you get documents like that, do you do any kind of checking to make sure the person is who he says that he is or represents that he is?
A. Yes.
Q. What kind of checking did you do with Mr. Chambers?
A. In this case, he was -- he listed two places of employment, casinos will not verify employment over the phone, so I merely made a copy of his casino identification card and

verified his employment at the Catalina Hotel over the phone.

Q. Where is the Catalina Hotel?

A. In Atlantic City.

Q. Okay. Now, was cash put down on the car in order to rent it?

A. Yes.

Q. And does the record disclose how much cash was left?

A. $300.

Q. Does the record that you have before you disclose when the rental agreement was made?

A. It was opened on April 25th of '88.

Q. And the approximate time?

A. 1:30 p.m.

Q. Do you have a recollection of Mr. Chambers getting the keys and leaving after that agreement was signed?

A. Yes, he would have done that.

Q. Was there anything unusual about any part of the rental situation as of that day?

A. No.

Q. Where did the figure $300 come from?

A. It would have been the approximate

cost of the rental for the day plus a $250 security deposit which we required.

Q. When was the car supposed to have been returned under that agreement?

A. The following day.

Q. Was the car returned the following day?

A. No.

Q. What happened?

A. We received a telephone call from a woman who was calling for Edward Chambers, saying that --

MR. DAVIS: Objection to what was said, Judge.

A. -- that the keys --

THE COURT: Whoa, whoa.

Mr. Talasnik?

MR. TALASNIK: I'll rephrase the question, your Honor.

BY MR. TALASNIK:

Q. You got this phone call from a woman who was calling for Mr. Chambers?

A. Huh-huh.

Q. Did you receive information from this woman having to do with the car?

A. Yes.
Q. After receiving that information, what did you then do?
A. I called a telephone number that was given to me by -- actually, it wasn't given to me. A message was given to me. I did not receive the telephone call myself. A message was given to me what telephone number to call back to give key cut numbers.
Q. What do you mean by key cut numbers?
A. Key cut numbers are numbers to have keys cut for the vehicle, the ignition key, door key that apparently had been lost.
MR. TALASNIK: Your Honor, I have an additional document. Perhaps it could be marked S-49B.
THE COURT: No. S-50.
(Below-described document marked Exhibit No. S-50 for identification)
BY MR. TALASNIK:
Q. I'm going to show you a document that has been now marked as S-50 for identification. I ask if you recognize that.
A. Yes. It's -- it was a note -- the note given to me with the telephone number to

return a phone call regarding the keys.

Q. And in compliance with that, you relayed the information necessary to make new keys?

A. Yes.

Q. Did the car come back that day?

A. No. It came back the following day.

Q. Which would have been Wednesday?

A. Yes, the 27th.

Q. Do you recall the car being returned?

A. Yes, I checked the vehicle in.

Q. Was there a deposit or any portion of the deposit that was returned to anyone?

A. Yes.

Q. How much and to whom was it returned?

A. It was returned to Mr. Chambers and it was $152.20.

MR. TALASNIK: Thank you, no further questions from the witness.

THE COURT: Mr. Davis?

MR. DAVIS: No questions.

THE COURT: You may step down, thank you very much, Ms. Boyle.

(Witness excused)

THE COURT: Call your next witness.

MR. TALASNIK: Deborah Stone, your Honor.

DEBORAH STONE, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Ms. Stone, in what municipality do you now live?

A. Cape County -- Cape May County.

Q. What kind of work do you do?

A. I'm a desk clerk.

Q. Where?

A. Pier 4 Motor Lodge.

Q. Where is the Pier 4?

A. Somers Point.

Q. How long have you been a desk clerk for the Pier 4?

A. About a year-and-a-half.

Q. Would you have been the desk clerk back on Monday, the 25th of April, 1988?

A. Yes.

Q. Do you recall what shift you were working?

A. 8:00 to 4:00. 8:00 in the morning until 4:00.

Q. 4:00 in the afternoon?
A. Huh-huh.
Q. Can you describe for us the procedure that was in effect as of April 25, 1988, for registering someone into a room?
A. Basically quoted them the rates and then gave a registration card to fill out and then get cash or credit card from them.
Q. Ms. Stone, I'm going to show you a series of documents that together have been marked as S-15 for identification. I would like you to look at them and tell me if you recognize what they are.
A. Yes. The first one is the registration card and then the bill that gets charged, the actual charges.
Q. Are the documents before you, do they appear to be the original that were maintained by the Pier 4 Motel?
A. Yes.
Q. And do they appear to be in the same condition that they were in at the time of their preparation?
A. Yes.
Q. Do they appear accurate?

A. Yes.
Q. Is there anything about the registration form that leads you to believe that that's the one that you completed on the 25th of April 1988?
A. Yes. It's my handwriting. We put the amount of the rate and the room numbers and the dates and everything and how much cash I took from him.
Q. Now, to whom was the room rented on that day?
A. Richard Simonelli.
Q. Did you ask for any identification from Richard Simonelli?
A. No. I neglected to.
Q. Is that the name that was signed by the person signing in?
A. Yes.
Q. And about what time of day did Richard Simonelli sign in?
A. Between 3:00 and 3:30 in the afternoon.
Q. Do you now recall whether anyone else accompanied Richard Simonelli when he signed in for the room that afternoon?

A. Yes. There was a gentleman that followed him in and when I offered to help him, Mr. Simonelli said he was with him. It was a black gentleman.

Q. You do recall that the companion was a black gentleman?

A. Huh-huh.

THE COURT: Was that answer yes?

THE WITNESS: Yes.

MR. TALASNIK: Thank you, no further questions.

THE COURT: Mr. Davis?

MR. DAVIS: I have no questions.

THE COURT: You may step down, Ms. Stone. Thank you very much.

(Witness excused)

MR TALASNIK: The State calls Rufus Duff.

RUFUS DUFF, JR., having been duly sworn, was examined and testified as follows:

THE COURT: Mr. Duff, good morning. Please be good enough to sit forward and lean into that microphone there so we can hear what you have to say.

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Duff, where do you liver?

A. 33B Lighthouse Apartments, Atlantic City.

Q. How long have you lived at the Lighthouse Apartments in Atlantic City?

A. Five years now.

Q. How old are you, Mr. Duff?

A. I'm 45 right now.

Q. What kind of work do you do?

A. Window work, cleaning.

Q. Do you know a fellow by the name of Rick Highlander?

A. Yes.

Q. Is the fellow you know as Rick Highlander in the court today?

A. Yes.

Q. Point him out, please.

A. There.

THE COURT: Pointing to the defendant.

BY MR. TALASNIK:

Q. Mr. Duff, did you ever do any work with Mr. Highlander?

A. Yes.

Intake

A-59-89T4

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
ATLANTIC COUNTY
INDICTMENT NO. 88-06-1553-C

STATE OF NEW JERSEY,

Complainant,

-vs-

RICHARD HIGHLANDER,

Defendant.

TRANSCRIPT OF
PROCEEDINGS

RECD
APPELLATE DIVISION
JUL 11 1990
Clerk

Mays Landing, N.J.
June 15, 1989

B E F O R E:

HON. STEVEN P. PERSKIE, JSC.

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQ.

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

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

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Assistant Prosecutor
For the State of New Jersey

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THE COURT: The record will reflect that we've discussed the schedule and I've indicated to counsel, Mr. Talasnik has indicated to counsel and to me that we will have evidence that will take part of today and after today he does not have any witnesses before Monday. As a result we will recess after the testimony today and reconvene Monday at 9:30 and at that time the State will proceed to complete its presentation.

MR. TALASNIK: Additionally, Your Honor, yesterday the Court asked for information regarding a proffer of certain physical evidence that the State would be offering at the conclusion of the State's case, specifically certain photographs that were alleged to have been taken at the autopsy on the remains of Gloria Simonelli. In reviewing the applicable court rule last night I found any number of citations to specific New Jersey cases that address the appropriate exercise of discretion in allowing or not allowing those photographs in. Given that the State will not be in a

position to rest until Tuesday, I would request to wait until then to be able to address that issue with all of those cases.

THE COURT: Mr. Talasnik, I thought I indicated yesterday, the record will reflect whether I did or I didn't, that I was soliciting but not requiring a proffer from you and you said yesterday you weren't going to be in a position to do it and I told you yesterday and I tell you again today that's okay.

MR. TALASNIK: Fine, thank you.

THE COURT: I wanted to know as much in advance as I could so that I would be able to prepare for it, but I told you if you weren't prepared to do that, I would live with it. It wasn't a problem yet and isn't a problem today.

MR. TALASNIK: I'll be in a position then to address the Court at the conclusion of the State's case. I have instructed the witnesses that they should not show the photographs to the jury, either on purpose or by accident.

THE COURT: I understand. Who

do you have, Doctor Jason?

MR. TALASNIK: No, I have Detective Teasenfitz to be followed by Doctor Jason.

THE COURT: Let's get started. Is it your expectation that you're going to go past lunch?

MR. TALASNIK: I think that I'll be completed by lunchtime. I have four witnesses available to testify today. Given the starting time I think I can be finished by lunchtime.

THE COURT: You don't have to be.

MR. TALASNIK: Well, I'll have them all here. If we are, we are.

THE COURT: Exactly, if we are, we are.

MR. TALASNIK: None of them have any other place to go, so if they need to come back this afternoon that's fine.

THE COURT: Okay, the record will also reflect that I have given all counsel today copies of what I propose are my final recommendations with respect to the

substance of the charges in the penalty phase and we'll discuss that when we discuss it.

(Jury returned to the courtroom).

THE COURT: Ladies and gentlemen, good morning. Sorry we're a little late getting started this morning. We have I assure you not been sitting around reading the newspapers. We have been working in connection with the matter and I apologize for the delay for you, but you should understand that the time that we were spending is time we would have to spend in the matter and I'm sorry it imposes on your schedule. I try to keep that to a minimum.

With respect to the schedule, let me advise you that we will not be here tomorrow. We may not even be here all day today yet, but we'll take as much time as we need and then recess until Monday morning so you can make whatever plans you like for tomorrow. Monday we'll again ask you to be here a little bit later, at 9:30 on Monday morning, because I have a couple other matters first thing, then we'll pick up and

proceed. I don't yet have a very good view of next week. I won't probably until about Tuesday. We will again leave Friday of next week as an open question and whenever I know what there is to know I'll give you a sense of it.

Just in general terms and in a very general way it's my present expectation that we may or may not finish the case next week. If we don't finish the case next week, whether we use Friday or we don't, we would probably be looking at sometime early the following week, that is the week of Monday, the 26th, Monday, Tuesday, perhaps Wednesday of that week, something in that general area, so for your general planning that's as much as I know at this point.

Okay, Mr. Talasnik, you may call your next witness.

MR. TALASNIK: Thank you, Your Honor, the State calls Detective Teasenfitz.

S T E P H E N J. T E A S E N F I T Z, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALASNIK:

Q. Detective, where are you currently employed?

A. I'm currently employed with the City of Margate, Margate City Police Department.

Q. How long have you been employed with the Margate City Police Department?

A. Approximately nine years.

Q. How much of that time has been spent as a detective?

A. Approximately three years.

Q. And have you been a detective continuously for the last three years?

A. Yes, I have.

Q. I'd like to direct your attention to the month of April, 1988. Were you working as a detective with Margate Police Department at that time?

A. Yes, I was.

Q. And in that capacity did you become involved in the investigation into the death of Gloria Simonelli?

A. Yes, I was.

Q. Like to direct your attention first to the morning of April 26, 1988. That would be the day after the killing. Did you have

occasion to conduct a search at a location within the City of Margate?

A. Yes, I did.

Q. What location was searched?

A. It was 100 North Monroe Avenue. That was apartment E, Miss Simonelli's apartment.

Q. You had information that that was where the deceased had resided?

A. Yes.

Q. And what was your purpose in going in?

A. To ascertain or locate any evidence involving the crime.

Q. Did you in fact participate in the search of Miss Simonelli's apartment?

A. Yes, I did.

Q. And were certain items seized by you?

A. Yes.

Q. I'm going to show you an item that has been marked as S-43 for identification. I want you to look at it and tell me if you recognize what it is.

A. Yes, this is a hotel reservation receipt, et cetera, for the Fairmount Hotel, San Francisco.

Q. And is this an item that was sei[illegible]

during the course of your participation in this search?

A. Yes, it is.

Q. Now, what did you physically do with that collection of documents after it was seized?

A. It was later turned over to the Prosecutor's Office for evidence.

Q. Okay. And I want you to now remove the contents of it to let us know whether it appears to be in the same condition that it was at the time that you seized it.

A. Yes, it does.

Q. Now, is there contained within there a bill that would refer to the approximate dates of the hotel stay?

A. Yes, there is.

Q. And what were the dates?

A. Arrival 11/8/87, departure 11/11/87.

Q. Is there an indication of in whose name the reservation was?

A. Yes.

Q. And what would that be?

A. Rick Simonelli.

Q. Is there also attached a credit card

receipt?
A. Yes, there is.
Q. And does the credit card receipt reveal whose credit card was used?
A. Yes, it does.
Q. What does it reveal?
A. Gloria Ann Simonelli.
Q. During the course of your search of Miss Simonelli's apartment, did you determine that she also had a post office box?
A. I also determined that there was a post office box, yes.
Q. And did you determine it appropriate to check that as well to see if there would be any relevant evidence?
A. Yes.
Q. Did you in fact go to this post office box?
A. Yes, I did.
Q. And in which post office was it located?
A. The Ventnor City post office.
Q. Was there anything in there?
A. Yes, there was some letters.
Q. And did you seize any or all of them?

A. I believe there was at least one letter seized.

Q. I'm going to show you an item that has been marked S-42 for identification, like you to look at it and tell me if you recognize what it is.

A. Yes, it's a letter from Custom Limousine Service and it is addressed to Mr. Rick Simonelli, A-Plus Maintenance.

Q. What's inside?

A. Custom Limousine Service, a bill to Mr. Rick Simonelli, A-Plus Maintenance, for the amount of $456.

Q. Is there anything else contained on there?

A. The name Rick Simonelli, A-Plus Maintenance, it's a request -- notice to call your attention to unpaid invoices listed above.

Q. In addition to your participation in these various searches, Detective, did you also have occasion to interview witnesses as part of the overall investigation?

A. Yes, I did.

Q. Was one of the witnesses that you

interviewed Michael Reed?

A. Yes.

Q. When did your interview of Michael Reed take place?

A. The interview with Mr. Reed took place on the 29th of April, 1988, at approximately two p.m.

Q. That would be approximately four days after the death of Miss Simonelli?

A. Yes.

Q. During the course of that interview with Mr. Reed, did you have any conversation with him regarding Richard Highlander and a gun?

A. Yes, we did.

Q. What did Mr. Reed tell you?

A. Mr. Reed during the interview had indicated --

MR. DAVIS: Objection to what Mr. Reed indicated.

THE COURT: Let me see you up here.

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: What's the

proffer?

MR. TALASNIK: Your Honor, the testimony is offered under evidence rule --

THE COURT: What's the proffer?

MR. TALASNIK: That he will testify that on that date Michael Reed did tell him about Rick having a gun, that he saw the gun, that it was stored at Mike Reed's house for some period of time.

THE COURT: As Michael Reed has testified here?

MR. TALASNIK: Well, yeah, subject to the cross examination which indicated that when Michael Reed gave his first statement to the police he didn't indicate that that was so.

THE COURT: Basis for the objection.

MR. DAVIS: Judge, number one, hearsay. Number two, I didn't pick up a date when this conversation was held.

THE COURT: April 29.

MR. DAVIS: Judge, when I made my objection the other day or made my cross

examination about the statement that Murray is talking about that he didn't tell the police, I was referring to the statements he initially gave to the police after he had said when they asked him about the gun and he said no. It was not referring to this conversation. I had no knowledge of this conversation. Therefore I'm objecting that it's hearsay.

THE COURT: It is certainly hearsay. The question is not whether it's hearsay. The question is whether it's admissible hearsay. I think it is admissible with a limiting instruction. I think it is admissible not for the substantive truth of the statement but rather addressed to the credibility of Reed and I will permit the testimony on that basis and after it comes in I will give a limiting instruction to the jury.

MR. TALASNIK: Thank you, Your Honor.

(The sidebar conference was concluded).

THE COURT: You may proceed.

BY MR. TALASNIK:

Q. During the course of your conversation with Michael Reed on the 29th of April, what information did he relate to you with respect to Richard Highlander and a gun?

A. Mr. Reed stated to myself and the investigators present that he was in fact aware that Richard Highlander owned a handgun.

Q. Was Mr. Reed able to describe the gun for you?

A. Yes, he stated to myself and the investigators that approximately two to three weeks prior to this interview he had personally seen this weapon and he stated that it was possibly a .357 magnum, four to six inch barrel, dark blue metal, brown handle hand grip and that the gun was a revolver.

Q. Was he able to tell you how it was he knew that Rick had this gun?

A. That he personally saw this weapon.

Q. Where?

A. At his home.

Q. Now, at the time that you interviewed

Mr. Reed, were you aware that he had earlier been interviewed and not mentioned anything about the gun?

A. In fact he pointed this out, that he was interviewed earlier and that he never mentioned the weapon in any prior interview because of his fear of Richard Highlander and fear that he may be harmed.

MR. TALASNIK: Thank you. I have no further questions of the witness.

THE COURT: Just one second, Mr. Davis, please.

Ladies and gentlemen, in general any evidence that is presented in the case may be considered by the jury with respect to any issue in the case. That is to say you may consider any testimony or any evidence in connection with any of the decisions that you have to make. Sometimes evidence is admitted in the case for a limited purpose and it may be considered by the jury only for a limited purpose and that's what this evidence just was.

You've just heard Mr. Teasenfitz testify as to something that Mr.

Reed said. Reed of course testified himself the other day. The testimony that was just offered was not offered, and you may not consider it, to establish that in fact the defendant had the gun or that the defendant stored the gun at Reed's house. You may consider whatever testimony you heard from Reed on that subject if you choose to. This testimony that you just heard was offered and may be considered by you if you find it helpful in evaluating Reed's credibility. That is to say as you recall when you heard the testimony from Reed, he testified with respect to what he said and what he didn't say on specific occasions and you will have to in listening to all of that testimony and everything else decide what you believe of what Reed said and what you believe the truth to be.

In order to assist you if you find it helpful in deciding what you believe about Reed and his testimony, you may if you choose consider this testimony, but it is offered only for that purpose, that is to help you evaluate Reed's credibility and

that's the only purpose for which you may consider it.

.Mr. Davis.

CROSS-EXAMINATION BY MR. DAVIS:

Q. Detective, you identified S-42 on behalf of Mr. Talasnik, is that true?

A. Yes.

Q. And what did you indicate that it was?

A. It's a letter addressed to Mr. Rick Simonelli, Custom Limousine Service, that's where it's from.

Q. And whose post office box is that?

A. The post office box I believe is -- it was a post office box that we obtained from Miss Simonelli's apartment.

Q. You obtained the letter from Miss Simonelli's apartment. I said whose post office box is that that's indicated on that letter?

A. That's Mr. Highlander.

Q. And that business that you indicated, A-Plus Maintenance, whose business was that?

A. I believe that was a past business of Mr. Highlander.

Q. At the time of this incident it was

Mr. Highlander's business, wasn't it?

A. No, I believe his business was Skyline Corporation.

Q. Didn't he also own A-Plus Maintenance?

A. At one time I believe. I never investigated his holdings.

Q. So actually you don't know if it was his business or not at the time of that letter?

A. No, I don't.

Q. Or better still the date of the bill?

A. Yes.

Q. On the date of the bill wasn't A-Plus Maintenance Mr. Highlander's?

A. Excuse me?

Q. On the date of the letter, S-42, didn't A-Plus Maintenance business belong to Richard Highlander?

A. I personally don't know whether it was his business. It was addressed to A-Plus Maintenance, Mr. Rick Simonelli.

Q. And A-Plus Maintenance which is contained on the letter, the post office box belonged to Richard Highlander, didn't it?

A. Yes.

Q. And the bill was sent to the post office box that belonged to Richard Highlander?

A. Yes.

Q. And do you know if the bill was paid?

A. I don't know.

Q. You also indicated S-43, what did you indicate S-43 was?

A. It was a hotel reservation and package from the Fairmount Hotel, San Francisco.

Q. Do you know if that bill was paid?

A. No, I don't.

Q. Now, you further indicated, Detective -- before I get to that, what's contained in that envelope, S-43, all you're doing is reading what you found in that envelope, is that true? The question is what you've indicated to the jury is what you've read in S-43?

A. Yes.

Q. You don't have any personal knowledge of that situation?

A. I wasn't there during the reservations, no.

Q. And you don't know where the money

came from, do you?

A. No, I don't.

Q. Now, directing your attention to April 29, regarding Michael Reed, how did it happen that on that date you spoke to Michael Reed again?

A. There was an interview set up to speak with him again.

Q. And why did you set up this interview, at whose request?

A. I was approached by attorneys of this office where I was interviewing. One of the attorneys had contacted myself and had indicated that they had a person that wished to speak to the police concerning the investigation of this murder we were investigating.

Q. And this was Michael Reed?

A. Yes.

Q. And you said at that time Michael Reed indicated to you that he had seen Mr. Highlander with a gun?

A. Yes.

Q. And he further indicated to you that, when I say you I mean the police department,

that on a prior occasion he indicated he had never seen a gun for what reason?

A. Excuse me?

Q. Why did he tell you that he initially told the police that he did not see Mr. Highlander with a gun?

A. In fear that Richard Highlander would come back and harm him.

Q. Let me ask you this question. What date did you receive that information?

A. Of him personally seeing him with the gun?

Q. Yes.

A. On the date of the interview I received that information.

Q. That was April 29?

A. Yes.

Q. On April 29, to the best of your knowledge, Mr. Highlander had not been captured, had he?

A. No, he had not.

Q. So he was still when I say free, he was still in the street or on the street somewhere?

A. Yes, he was.

Q. And not being under the auspices of certain authorities he still had the abil'ty to come back? When I say come back, I mean come back to Mr. Reed?

A. The possibility existed.

Q. And Mr. Reed didn't indicate to you on that date that he knew Mr. Highlander was in custody, did he?

A. Not to my recollection.

Q. In fact he knew when he was talking to you that Mr. Highlander had not been captured by the police authorities?

A. There was never any reporting of it.

Q. For whatever reason he gave you a second story as opposed to the first statement that he gave to the police?

A. He gave me this statement, yes.

Q. Did you put him under oath when you took this information?

A. No, I did not.

MR. DAVIS: That's all I have.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Nothing further, thank you.

THE COURT: You may step down,

Detective. Thank you very much. You may call your next witness.

MR. TALASNIK: Your Honor, the State calls Doctor Donald Jason.

D O N A L D J A S O N, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALASNIK:

Q. Doctor Jason, are you currently employed with the County of Atlantic?

A. Yes.

Q. And in what capacity?

A. I am the County Medical Examiner.

Q. What does the County Medical Examiner do?

A. County Medical Examiner investigates certain types of death, usually unnatural deaths in order to determine the cause, the manner and circumstances of the death. If necessary as a pathologist I also perform an autopsy.

Q. What is the educational background that you have, Doctor?

A. Okay, I graduated medical school from New York University in 1970, then did internship and residency in pathology and

then was indeducted into the United States Navy for two years serving as chief of pathology at several naval hospitals. In 1974 I went to the Office of Chief Medical Examiner in New York City as a medical examiner, one of the medical examiners and worked there for about three and a half years. At that point I went to Suffolk County, New York, out on Long Island and was a deputy medical examiner there for four and a half years and then in 1982 I came here as county medical examiner, I've been here ever since.

Q. Are you licensed to practice medicine in this State or any other?

A. In New Jersey and New York.

Q. Do you have any board certifications, Doctor?

A. Yes, I'm board certified in anatomic and forensic pathology.

Q. Are you a member of any professional organizations that deal with this area of specialty?

A. Yes, I'm a fellow of the American Academy of Forensic Sciences and member of

the National Association of Medical Examiners.

Q. Were you ever involved in teaching in in this area of medicine?

A. Well, I did teach, I lectured during a course given to the homicide detectives in New York while I was there. I do give some course material to people in the county police academy here on a regular basis.

Q. You've indicated board certification in anatomic and forensic pathology. First tell us, what is pathology?

A. Pathology is a branch of medicine, we deal with pathology in human disease and injury. In pathology we study this by the technique of a biopsy, which is examination of tissue taken during surgery, and the autopsy which is a complete examination of a deceased human being.

Q. And what is the difference between anatomic pathology and forensic pathology?

A. Forensic pathology is a sub-specialty, a branch of anatomic pathology, and in forensic pathology we use the techniques that we learn in anatomic pathology to answer

questions raised by the law and in law courts much as I'm testifying today.

Q. Have you ever been qualified as an expert in forensic and anatomic pathology in a court?

A. Yes.

Q. And have you been so qualified in any superior courts in the State of New Jersey?

A. Yes, many times.

MR. TALASNIK: Your Honor, at this point I would offer Doctor Jason as an expert in the field of forensic pathology.

MR. DAVIS: I have no objection.

THE COURT: Ladies and gentlemen, in general witnesses in a case may testify only on the basis of facts. That is to say, things that they saw, things that they did, things that they heard, that we do not permit witnesses to testify on the basis of their opinions or conclusions. We make exceptions to that rule in the case of what are called expert witnesses. Expert witnesses are defined in the law as people who by reason of their background or training

or qualifications or experience have the ability or the knowledge to testify in areas that are not generally available or generally known to a jury or to the court or to the public.

Example; an expert testifies, his testimony is not necessarily binding on a jury. The jury should consider the testimony of an expert the same as it would consider the testimony of any other person. You should evaluate the testimony of the expert, you should evaluate the credibility of the testimony, you should evaluate by considering the background, the qualifications, training and experience of the expert, whether he has the ability to make the kind of conclusion or opinion that he testifies to. It is my responsibility to decide whether a witness may testify as an expert and therefore may testify on the basis of opinions or conclusions and I will determine that Doctor Jason may so testify. It is your obligation to decide how much weight you choose to afford to his testimony. You may proceed.

BY MR. TALASNIK:

Q. Doctor, during the month of April, 1988, did you become involved in an investigation into the death of Gloria Simonelli?

A. Yes.

Q. How did you become involved in that investigation?

A. I was called and told that there had been a shooting and a death and that an autopsy was required right away in order to determine the cause of death and get the bullet.

Q. Where and when was an autopsy performed?

A. It was performed, the exact date would be on my report, at about one in the morning the night of the shooting at Shore Memorial Hospital.

Q. Did you in fact perform the autopsy on Gloria Simonelli?

A. Yes.

Q. Were other persons present?

A. Yes, there were a number of police officers present.

Q. What's the purpose of an autopsy?

A. Purpose of an autopsy is to determine the cause of death, that is the medical cause, the manner of death, in order for me to write out a death certificate, that is whether natural, accidental, homicidal, and so on, and to answer other questions that may arise as to the circumstances surrounding the death. For example the direction that the bullet traveled.

Q. That sort of thing?

A. Yes.

Q. Now, in the performance of an autopsy would it be relevant to examine the clothing that the deceased was wearing at the time of death?

A. Yes.

Q. In this case did you have occasion to examine the clothing?

A. Yes.

Q. What was the purpose in examining the clothing for your inquiry into the manner of death and the cause of death?

A. The purpose would be to correlate, to show that the bullet wound in the body would correspond to the bullet wound in the

clothing to see how the clothing had been worn in case it became an issue, to see in certain circumstances how many bullets had been fired, sometimes, although not in this case, to see if you can tell something about the range, how far the gun was from the body. If clothing comes in, the way certain things are deposited on the skin they would be deposited on the clothing, but that didn't occur here.

Q. So examination of the clothing and conclusions based on that examination would be within the area of your expertise?

A. Yes.

Q. Did you have occasion to examine the clothing that was presented or represented to you as being the clothing worn by Gloria Simonelli at the time of her death?

A. Yes.

Q. Do you have any recollection of the clothing and what you found?

A. Well, I do have some recollection. It would be helpful if I could see my report as well. There was a fake leather jacket, sweater and I believe pants, but beyond that

I would rather be able to refresh my recollection.

MR. TALASNIK: Your Honor, I have a multi-page document that I would like to have marked for identification.

(Exhibit S-51, autopsy report, was marked for identification).

MR. TALASNIK: And I would show S-51 to Mr. Davis.

BY MR. TALASNIK:

Q. Doctor, I'm going to show you a collection of papers that have together been labeled S-51 for identification. Like you to look at them and tell me if you recognize what they are.

A. Yes, this is a copy of my four page autopsy report.

Q. Did you in fact prepare that report?

A. I dictated that record, it was transcribed, I went over it and signed it, yes.

Q. How do you dictate such a report?

A. I dictate it on a tape machine while I'm doing the autopsy and my secretary will take that tape and transcribe it and then

I'll read it over and if necessary refer back to the tape, I don't believe it was necessary in this case, and correct any errors if there are any and sign the report.

Q. You have therefore had occasion to read your secretary's transcription of the tape that you made while you were actually performing the autopsy?

A. Yes.

Q. And did it appear to be accurate?

A. Yes.

Q. Would referring to that report in court today refresh your recollection about what you saw and what you found back on the 26th of April?

A. Yes.

Q. Referring to that report then to refresh your current recollection, will you tell us what findings you made with respect to the victim's clothing?

A. Okay, she was in fact wearing a fake leather jacket, light brown in color and it had been cut by the emergency medical people, but examining it showed that in addition to those cuts there were some round and somewhat

irregular wounds which were clearly bullet wounds. There were on the right arm holes, two holes in the sleeve of the right arm and these corresponded to a wound in the body and there was a series of three holes in line in the right chest which indicated an in, out and then in, in the jacket that is, probably having been folded somewhat like this, which also corresponded to a wound in the body.

Recently I had a chance to look at that jacket again and found another hole in the sleeve, in and out, and also at the time of the autopsy I found another in and out hole in the upper portion of the right shoulder which did not correspond to any wound in the body. In other words, there was no wound in the right shoulder, it had just gone through the jacket.

Q. What about the balance of the clothing, was that examined as well?

A. Yes.

Q. What findings were you able to observe by examining that other clothing?

A. Well, she had a knit top corresponding to the holes in the chest wound and the arm

wound, she had a bra which also had a hole corresponding to the wound in the chest. She had a pair of panties and some blue jeans which did not have any bullet wounds in them.

Q. Doctor, I'm going to show you an item that has earlier been marked S-13 for identification and I represent to you that some effort has been made to close those areas that had been opened by the medical technicians. With that in mind I want you to look at S-13 and tell me if you recognize what it is.

A. Yes, this is the victim's jacket.

Q. Now, you have described for us some holes, what appear to be bullet holes in the elbow area and the chest. Are you able to find them now?

A. Yes, this is the right sleeve. This hole is the entrance hole and this hole is the exit hole in the right arm corresponding to the wound in the body.

Q. And on the chest?

A. On the chest there are these three holes in a row, in, out, in, which if folded like this would correspond to a single wound

and there was a single wound in the chest.

Q. Now, you've also indicated that at the time that you examined the jacket for purposes of the autopsy you found a bullet hole or series of bullet holes on the shoulder?

A. Yes.

Q. Now, this was found at the time of the autopsy?

A. Yes, I believe so, yes.

Q. And do you find those holes there on the jacket?

A. Yes, there is this hole which is near where it was cut, but it's clearly separate and this hole in the back of the shoulder which would be the exit, so it went through the shoulder pad area of the jacket but did not hit her shoulder.

Q. So there was no corresponding injury to her shoulder?

A. No.

Q. And in examining the jacket prior to the proceedings today, you found an additional indication of a hole?

A. Yes, in the end of the sleeve here

there is a bullet wound track, that is an in and an out, on the right sleeve.

Q. Did that correspondence with any injuries to the wrist of the victim?

A. No.

Q. After examining the victim's clothing did you then make an examination of the victim's body for any external signs of trauma?

A. Yes.

Q. And were you able to find such external signs of trauma?

A. Yes.

Q. First addressing your attention to the victim's arm, what did you find?

A. There was a bullet wound track, that is an entrance track through the arm and an exit in the inner aspect of the right arm. The entrance was about an inch and a half below the elbow and half an inch towards the inside so it would be where I'm pointing to. The track went through the arm breaking the end of the humerus, which is the bone in the end of the arm, this little part that protrudes here, and the bullet exited on the

inner aspect of the upper arm after having traveled about three inches through the arm about where I'm pointing here.

Q. Doctor, how are you able to distinguish between an entrance wound and an exit wound?

A. The entrance wound in addition to some abrasion had a round punched out hole. The exit was irregular and torn and that's what bullets will do, especially this type of bullet. It will open up and make a larger hole on exit.

Q. Was any bullet found in that arm along that track?

A. No.

Q. Was someone present at the autopsy with the ability to photograph the findings that you would make?

A. Yes.

Q. Doctor, I'm going to show you an item that has been marked as S-32 for identification. I'd like you to examine it and tell me if you recognize what is depicted, advising you not to attempt to show them to the jury.

A. Yes, this is a photograph of the victim's arm showing both the entrance and the exit and showing the difference in size of the wounds.

Q. Does that photograph appear to accurately depict what you saw in the performance of your autopsy?

A. Yes.

Q. Next I want to direct your attention to the chest area of the victim and ask whether you found any external evidence of trauma to the chest?

A. Yes, there was.

Q. What did you find?

A. Here was an entrance bullet wound in the chest, in the right side of the chest towards the inner aspect of the right breast.

Q. Was there a corresponding exit wound?

A. No.

Q. Was that area photographed as well?

A. Yes.

Q. I have a photograph that has been marked as S-31 for identification and I'd like to ask you to do the same thing, to look at this photograph, tell me if you recognize

what it is?

A. Yes, this is a photograph of that part of the victim's right chest and shows the entrance wound.

Q. And as with the last photograph I will ask you whether it appears to accurately depict the external signs of trauma, that is the bullet entrance wound, to the chest of Gloria Simonelli?

A. Yes, it does.

Q. Were there any other external signs of trauma consistent with bullet wounds or bullet abrasions?

A. No.

Q. So the only ones you found were the entry and exit wound to the arm and the entrance wound to the chest?

A. That's right.

Q. Given that those were the only external signs of injury, what are you able to conclude with respect to the hole that you've described to the shoulder area and the one that you observed in the wrist area of the jacket?

A. They would have been caused by

separate gunshot wounds from what happened in the rest of the body, so there had to be at least one more bullet that went through her jacket. It could have been just one more bullet because you can line up, if the victim had held her arm up, the wound in the sleeve with the wound in the shoulder.

Q. If the victim had observed her assailant and had placed her arm in front of her defensively, would the entry and exit holes in the wrist line up with the entry and exit wounds on the shoulder of the jacket?

A. Yes, they would, rather easily if you just hold up the sleeve and imagine someone were wearing the jacket, entrance, exit, entrance, exit, in a line.

THE COURT: Witness has placed the right sleeve of the jacket in an elevated position with the elbow area sort of bent and is holding the end of the right sleeve against the face of the right shoulder of the jacket.

BY MR. TALASNIK:

Q. Doctor, after completing the external examination of the clothing and of the

victim's body, was an internal examination also made for evidence of trauma?

A. Yes.

Q. Will you tell us what evidence of trauma you found in the torso of Gloria Simonelli?

A. Yes, there was a bullet wound track and I followed the track and found the bullet. It entered in the right chest, went through the chest wall, through a portion of the right lung, in and out of the right side of the heart through the diaphragm which separates the chest from the abdomen and then into the liver. The track then went through the liver. In the liver itself was found a copper jacket. This is a piece of metal that is wrapped around the lower portion of certain types of bullets that can come free and in fact did in this case as the bullet went through the liver. The bullet itself continued and then ended up against the 11th rib in the back and came to rest there and that's where I found the lead portion of the bullet.

Q. Was the lead portion of the bullet and

the copper jacket that you referred to, were they the only ones that were found in the body of Gloria Simonelli?

A. Yes.

Q. What did you do with the copper jacket and the lead bullet that had been separated?

A. I turned them over to Bruce Harbison, investigations officer, for transmittal to ballistics.

Q. Did you do anything with the copper jacket and the lead projectile or bullet that had been separated so that you would be able to recognize them?

A. Yes, I scratched the initials S and J on the base of each, S for Simonelli, J for Jason.

Q. As between the two it would have been the copper jacket that you found first?

A. Yes.

Q. I'm going to show you an item that has been removed from S-38 for identification and I'd now ask to be separately marked perhaps as S-38A.

THE COURT: All right.

(Exhibit S-38A, copper jacket,

was marked for identification).

MR. TALASNIK: I would show S-38A to Mr. Davis.

BY MR. TALASNIK:

Q. Doctor I'm going to show you an item that has now been marked S-38A. I'd like you to open it and remove the content, tell me if you recognize what's in there?

A. This is a copper jacket and it has my mark on the base and is the one I took from the liver of the victim.

MR. TALASNIK: Your Honor, I have a second envelope that has been removed that I'd like marked S-38B.

(Exhibit S-38B, lead portion of bullet, was marked for identification).

MR. TALASNIK: I would show S-38B to Mr. Davis.

BY MR. TALASNIK:

Q. Doctor, I'm going to show you what is now separately marked as S-38B, like you to open the envelope, remove the contents and tell me if you recognize what it is?

A. Okay, this is the lead portion of the bullet and it has my mark on the base and is

the lead portion of the bullet that I took from the body.

Q. Now, Doctor, in each case with respect to the copper jackets and the lead bullet, the items appear to be distorted or mis-shapen. What's that about? Why is that the case?

A. That's because the bullet struck first and broke a portion of the humerus and on going through the body also, the body will tear away and open up the bullet. This type of bullet is designed to be opened up as it's going through tissue.

Q. Now, Doctor, keeping in mind the observations you made with the holes in the jacket, specifically the entrance and exit wound on the arm of the jacket and the entrance wound on the chest of the jacket, keeping in mind the entry and exit wounds you found on the arm and entrance wound in the chest and also given the finding of but one copper jacket and one lead projectile in the victim's body, were you able to come to some conclusion with a reasonable degree of medical or forensic certainty as to the path

that the fatal bullet traveled?

A. Yes.

Q. Will you explain what findings you made and the reasons for those findings?

A. Okay, I found first of all that in and out track in the right arm which I described which struck bone and it would have opened up this type of bullet wider. I found the entrance wound in the chest to be not -- it had to be an entrance wound since I followed it to a bullet and there was no exit, to be larger and more irregular than this type of bullet would have caused if it hadn't struck an intermediate target such as an arm with bone in it. The body of the victim could be lined up with her arm held across her chest and her forearm upward like I have it now on my own body, such that the entrance wound and exit wound in the arm would line up with the entrance wound with the chest and then be in line with the bullet wound track in the body, and it's my opinion therefore that this is all the same bullet having gone through the arm, entered, exited and then reentered into the chest.

Q. Doctor, if the victim in this matter perceived her attacker and if she placed her arm in front of her body defensively like this, would that sequence of events be consistent with the medical findings that you've made and the conclusion that you've now given the jury?

A. Yes.

Q. While you were performing the autopsy did you do anything in an effort to demonstrate this conclusion that you made about one bullet causing this series of injuries?

A. Yes, I tried moving the victim's arm such that it would line up that way and it did and several photographs were taken in that position.

Q. Doctor, I'm going to show you two photographs that have been separately marked as S-33 and S-34 for identification. I'd like you to look at these photographs and first tell me whether you recognize what they depict?

A. Yes, they depict the victim placed in the position which I have just described and

in fact they are holding the arm up.

Q. And do the pictures appear to accurately depict that which was apparent to you in the performance of the autopsy?

A. Yes.

Q. Now, Doctor, were you able from the same kind of evidence to make any determination as to the track of the bullet in terms of upward, downward, right, left?

A. Yes.

Q. What determinations were you able to make?

A. The bullet traveled of course front to back, slightly downward, slightly right to left.

Q. Doctor, as a result of your examination, your findings, training and experience, are you able to come to a conclusion as to the anatomic cause of the death of Gloria Simonelli?

A. Yes.

Q. And what is that conclusion?

A. She died from internal hemorrhage due to a bullet wound that perforated her heart, lung and liver.

Q. Are you also able to come to a conclusion as to the manner of death?

A. Yes.

Q. What would that be?

A. Homicide.

MR. TALASNIK: Thank you, Your Honor, I have no further questions.

THE COURT: Mr. Davis.

CROSS-EXAMINATION BY MR. DAVIS:

Q. Doctor Jason, on the night that you performed the autopsy did you inspect that brown jacket that you have before you?

A. Yes.

Q. On the night that you performed the autopsy did you determine how many bullet holes were in that jacket?

A. All except for the one at the end of this sleeve, yes.

THE COURT: Indicating the right sleeve.

BY MR. DAVIS:

Q. Now, when you reached your conclusions of the position of the victim, is that based on anything that anyone tells you about what happened or do you just base it on your

medical knowledge?

A. I base it as I answered the question on the appearance of the wounds in the body, in conjunction with the type of bullet that I was able to recover, in conjunction with the fact that the body could be able to be put into the position which would line up the bullet tracks.

Q. You used the phraseology could be put into position?

A. Yes.

Q. You don't know for a fact what position the body was in when it was shot, do you?

A. Well, my opinion was it was in this position because that's the way the bullet wounds line up.

Q. That's your opinion?

A. Yes.

THE COURT: Indicating a raising of the right arm bent at the elbow near the chest.

BY MR. DAVIS:

Q. But you weren't there when the body was shot?

A. I was not at the shooting, no.
Q. When the body is brought to you, it's brought to you in what condition?
A. She had been attended to by medical people, had some surgical procedures done on her prior to my seeing her.
Q. And with regard to the jacket, the jacket is not on the body when you initially see the body?
A. No, it had been cut off.
Q. And you don't know exactly how the jacket was being worn at the time of the incident?
A. Well, yes, I do from the fact that the bullet wounds correspond to the wounds in the body.
Q. Now, directing your attention to the bullet wound to the shoulder area of the jacket, you've indicated that there appears to be an entry and an exit?
A. Yes.
Q. You further indicated that there appears to be an entry and exit in the wrist area?
A. Yes.

Q. Now, do you know for a fact, Doctor, that that was one or two bullets?

A. No.

Q. So it could have been two bullets?

A. Could have been.

Q. There's nothing to indicate that when that bullet went, directing your attention to the wrist area, that when that bullet went through the wrist area that the arm was down at the side?

A. Well, if the arm were down at the side she would have had to have been shot from behind to do that because the entrance is on I guess you call it the under surface of the sleeve and the exit, you can tell this by the appearance of the tearing, is near the elastic portion and unless the attacker were behind her the arm was up.

Q. Assuming the attacker was in front of her.

A. Then the arm was up.

Q. There's nothing to indicate that the bullet that went through the wrist area -- well, you can't tell us that the bullet that went through the wrist area was in fact the

same bullet that went through the shoulder area?

A. That's correct.

Q. Now, you further indicate -- let me ask you this question first. The bullets that alledgedly went through the wrist area and the shoulder area, did you ever have an opportunity to examine those bullets?

A. No.

Q. So from listening to your testimony, three bullets could have gone through that jacket on the night in question?

A. Could have been three, could have been two.

MR. DAVIS: I have nothing else.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Nothing. Thank you, Your Honor.

THE COURT: Doctor, thank you. Mr. Talasnik, would you recover the exhibits, please?

MR. TALASNIK: Yes, Your Honor. The State calls Officer Bruce Harbison.

BRUCE HARBISON, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALASNIK:

Q. Mr. Harbison, where are you currently employed?

A. Atlantic County Sheriff's Department.

Q. And how long have you been with the Sheriff's Department?

A. Approximately twelve years.

Q. In what capacity are you employed with the Sheriff's Department?

A. I'm an identification officer.

Q. What does an identification officer do?

A. Basically in our particular instance we keep the records for the county jail and we respond to scenes of crimes and are responsible for photography and the collection of evidence.

Q. Do you have any training in the field of photography?

A. Yes.

Q. And do you make use of that training in your work as an identification officer?

A. Sure.

Q. I'd like to direct your attention to Monday night, the 25th of April, 1988, and ask whether you were involved in a scene investigation?

A. Yes, I was.

Q. And what scene was that?

A. It was the scene of a shooting at a bar in Margate.

Q. About what time did you get there?

A. Approximately eleven p.m.

Q. And did you have your photography equipment with you?

A. Yes.

Q. Did you discuss with officers at the scene whether the scene had been preserved for you before your arrival?

A. Yes.

Q. As a result of that conversation what things were the same and what things were different?

A. Basically it was explained to me when I arrived at the scene, number one, that the victim had been removed. Basically everything was the same, at least as far as my understanding is concerned, that was

basically the same. The only thing that had been removed was the victim.

Q. Okay. Now, did you determine to take photographs at the scene?

A. Yes.

Q. And are you responsible for developing your own photographs?

A. Yes, I am.

Q. I'm going to show you a series of photographs and the first thing I'm going to ask you is simply whether you recall taking these photographs and whether they accurately depict that which you determined to take pictures of. First one, S-16?

A. Yes, I took the photograph.

Q. S-17?

A. Yes.

Q. S-18?

A. Yes.

Q. S-19?

A. Yes.

Q. S-20?

A. Yes.

Q. S-22?

A. Yes.

Q. S-23?
A. Yes.
Q. S-24?
A. Yes.
Q. S-25 and S-26?
A. Yes.
Q. S-21?
A. Yes.

MR. TALASNIK: And a final photo that had not been previously marked, Your Honor, and I would request that it be marked.

THE COURT: So you've shown 16 through 26. This is S-52.

(Exhibit S-52, photograph, was marked for identification).

BY MR. TALASNIK:

Q. The final photograph at this point that I wanted to show you is S-52.
A. Yes, I took all of the photographs and they accurately represent the scene as I saw it that night.
Q. Did you have occasion to be in and take photographs of the parking lot which is between the rear of the restaurant and the

beach?
A. Yes.
Q. What kind of lighting was back there at the time?
A. It was very low lighting whatever it was. I assume street lights and lights attached to the building itself.
Q. Were you able to see?
A. Yes, it was fairly well lit.
Q. Okay. I'm going to show you first the photograph marked S-16 for identification, ask you to tell us what is depicted there.
A. This would be the front of the bar.
Q. Does that have anything to do with the scene of the alledged shooting?
A. Not as far as I know.
Q. Does it disclose, however, the name of the establishment?
A. Yes.
Q. Next I'm going to show you two photographs marked S-18 and S-17 for identification, like you to look at those twelve and tell us what is depicted there.
A. This is basically the rear of the building and the area where the victim had

been located.
Q. Is there disclosed on those photographs a rear door that exits near a telephone, a pay telephone?
A. Yes.
Q. I notice on the ground here there is a bag. Do you know what that bag is?
A. No, I don't.
Q. There is also the outline that appears to have been drawn on the blacktop. What can you tell me about that?
A. Basically I was told at the scene, I wasn't told, I assume that that's where the victim had been lying and during the course of the photography one of the officers, and I don't remember who, explained to me that the exact location had been different originally. That's all I know. That's the way I found it when I got there.
Q. Next I'm going to show you two photographs that have been marked separately as S-19 and 20. What is depicted in those photographs?
A. It's basically the same as the last two photographs. It's the back of the bar, a

little bit different perspective moving down toward the Longport end of the parking lot, looking toward the Ventnor end.

Q. In looking at those photographs is there depicted an open door that you can see into from your location in the parking lot?

A. Yes.

Q. And can you even see someone standing in that open doorway?

A. You can see someone in the doorway, yes.

Q. S-22.

A. Again this was taken in the rear parking lot of the bar and it's a photograph of two vehicles, and the black vehicle as I recall was represented as being the victim's car.

Q. And does this picture attempt to show the relative proximity of the black vehicle and the approximate area where the victim was shot?

A. Yes, it does.

Q. What about S-23?

A. Again this is basically the same area. I took this photograph standing up on

the deck on the second level behind the bar looking down at the parking lot.

Q. And would this photograph also give you an idea of the relative proximity of the victim's vehicle and the approximate area where she was shot?

A. Yes.

Q. S-24.

A. Again in the rear of the bar, this shows the rear of the victim's car.

Q. In addition to taking these photographs at the scene, was an examination conducted in the general area where the victim had been shot to see if there was any evidence of bullets having struck the ground or the walls around?

A. Yes.

Q. What did you find?

A. On my arrival as you'll note in some of the photographs there are some areas on the bar itself, on the wooden parts of the building which were circled with chalk. Evidently some of the officers who had arrived at the scene prior to myself had thought that these might be evidentiary,

possibly bullets or whatever and had circled them and I photographed them and then collected them.

Q. I'm going to show you now the photographs that have been marked S-25 and S-26 for identification. What do those photographs depict?

A. They depict the areas that I just mentioned that had been drawn in prior to my arrival where we retrieved pieces of what turned out to be lead.

Q. Now, in relation to photograph S-17, where did you find what appeared to be lead fragments?

A. It would be what appears to be a tunnel or an area where you can walk under the deck and it was in that area.

Q. That would be in fairly close proximity to where the victim was shot?

A. That's correct.

Q. Would that also be fairly close to the rear door that's near the pay phone?

A. Yes.

Q. Was there any evidence that a bullet had struck the ground in that general area?

A. There was an area near where the chalk lines had indicated that the victim had been that looked like it may have been some type of like a ricochet type of thing. It was a very fresh mark in the asphalt and I also photographed that.

Q. I show you S-21 and 52 and ask you what those photographs depict?

A. 52 again shows the overall area where the victim had been located and at the bottom of which is the dark area that I mentioned as looking to me like a possible ricochet, and then 21 is a close up of that area.

Q. And the relatively fresh indentation in the asphalt is somewhat close to the area where the victim is supposed to have been shot?

A. Yes.

Q. Now, based on your training and experience, if a bullet struck the blacktop in that location would it fragment?

A. It's certainly possible, sir.

Q. And could the fragments have caused the areas that you have separately marked --

MR. DAVIS: I'm going to

object, Judge. He hasn't indicated any expertise in this area. He's indicated that he's an ID officer.

THE COURT: Objection sustained.

BY MR. TALASNIK:

Q. Did you determine to dig out the fragments that you found in the entrance to this overhang near that rear door?

A. Yes.

Q. And what did you do with them?

A. I collected them and submitted them to the New Jersey State Police laboratory.

Q. I'm going to show you an envelope that has been marked S-38 for identification, like you to look at the envelope and tell me if you recognize what it is.

A. Yes, this is the envelope that I put the specimens in to take it to the lab.

Q. Will you open that envelope, remove the contents and tell me if you can identify the contents?

THE COURT: There are four smaller envelopes that he has removed from the larger.

THE WITNESS: Correct, these are four of the fragments that I removed from the wooden area, the area of the passage way or tunnel.

BY MR. TALASNIK:

Q. And these items were removed by you?

A. Yes.

Q. And they were later submitted to where?

A. To the New Jersey State Police Lab in Hammonton.

Q. After completing your efforts at the crime scene, did you have occasion to attend the autopsy on Gloria Simonelli?

A. Yes, I did.

Q. Do you remember about when that occurred?

A. As I recall it was about six o'clock the following morning.

Q. And were you personally present for the performance of the autopsy?

A. Yes.

Q. At the time of the autopsy was the clothing that the victim had been wearing turned over to you?

A. Yes.
Q. Do you recall what kind of clothing it was?
A. There was a leather jacket and a pair of jeans, a sweater I believe, a pair of shoes.
Q. With respect to the jeans, did you check the contents of the jeans to see if there was anything in the pockets?
A. Yes.
Q. Did you remove anything?
A. Yes, I did.
Q. Going to show you an item that has been marked as S-40 for identification, like you to look at it, tell me if you recognize what it is.
A. Yes, it's some type of a photo ID that had belonged to the victim from the Tropicana.
Q. Do you recall finding that in the victim's pocket?
A. Yes.
Q. Now, I'm going to show you a group of papers that are folded and have been marked S-41 for identification. Like you to look at

them and tell me if you recognize what they are?

A. Yes, these are the papers that I removed from the victim's jeans.

Q. Was the physical clothing turned over to you?

A. Yes.

Q. Going to show you an item marked S-13 for identification. I advise you that some effort has been made to close the cuts in it, but with that in mind I want you to look at it, tell me if you recognize what it is.

A. Yes, that's the jackets turned over to me represented as having been the victim's.

Q. During the course of the autopsy would you be responsible for photography?

A. Yes.

Q. And in that capacity did you in fact take photographs of what the doctor was doing during the course of the autopsy?

A. Yes, I did.

Q. The photographs I'm going to ask you about, I want you to be careful to simply hold them so that just you can see them for identification purposes. First one I want to

show you is S-32 for identification. Like you to look at it, first tell me whether you took that photograph.

A. Yes, I did.

Q. Does it appear to accurately depict what you remember seeing in the autopsy room?

A. Yes.

Q. What does it depict?

A. It shows an area on the victim's arm which had apparently been a gunshot wound.

Q. Next, S-31 for identification, again I want you to look at the photograph and tell me if you took that photograph.

A. Yes, I did.

Q. Does it appear to accurately depict that which you saw in the autopsy room?

A. Yes, it does.

Q. And what does that depict?

A. Again it's another area on the victim's chest that appeared to be a gunshot wound.

Q. S-33 and S-34 for identification, like you to look at those two photographs and tell me whether you recognize them as photographs that you took.

A. Yes.
Q. Do they both appear to accurately depict what you remember seeing in the autopsy room?
A. Yes.
Q. In each case what do they depict?
A. They depict the areas we just mentioned, the arm and the chest area and they both have a probe that Doctor Jason had put in to try to figure the angle of the shot.
Q. During the course of the autopsy did Doctor Jason remove anything from the victim's body?
A. Yes.
Q. What did he remove?
A. What appeared to be some type of lead fragments or copper fragments.
Q. Were these items turned over to you?
A. Yes.
Q. Like you to look at S-38A and 38B, like you to look at the envelopes and the contents and tell me if you recognize what they are.
A. These are the fragments that Doctor

Jason removed from the victim.

Q. And what did you do with the two fragments that Doctor Jason removed from the victim?

A. Again I transported them to the New Jersey State Police Lab for examination.

MR. TALASNIK: I have no further questions.

THE COURT: Counsel may approach briefly.

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: My notes reflect that you originally told me there were seven envelopes included in S-38. I tracked six, two from the body and four from the wall. What happened to the seventh?

MR. TALASNIK: I think the reference was seven including --

THE COURT: The big one and six little ones?

MR. TALASNIK: Yes.

(The sidebar conference was concluded).

THE COURT: Mr. Davis.

MR. DAVIS: I have no questions, Your Honor.

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

MR. TALASNIK: I'd like to have a few minutes to check on my next witness.

THE COURT: We'll take a brief recess at this time. I understand we have only one more witness today, is that right?

MR. TALASNIK: Yes.

THE COURT: We'll be back in just a few minutes.

(Jury leaves the courtroom).

THE COURT: I note there are five exhibits marked about which no evidence has been presented, S-27 through 30, scene photographs, and S-35 which is an autopsy photograph, is that right?

MR. TALASNIK: S-35 I know about.

THE COURT: 27 through 30 you didn't show to Mr. Harbison.

MR. TALASNIK: Yes, I know.

THE COURT: Okay, we'll take a

recess.

(Whereupon a recess is taken).

THE COURT: Okay, are we set?

MR. TALASNIK: Yes, Your Honor the next witness, Lieutenant Welsh, I'm calling him now. I will want to reserve the right to recall him before the State rests if I determine that it's necessary before that time. I'm only calling him for certain purposes today.

THE COURT: Mr. Davis, any comment?

MR. DAVIS: Could he proffer what the purpose is today? Then maybe I'll know.

MR. TALASNIK: Well, I'm simply addressing the contact between Lieutenant Welsh and the defendant on the 13th of May. I'm not getting into the interviews that were conducted in New Jersey. I don't want to take that too far out of sequence with everything else.

MR. DAVIS: I don't have a problem.

(Jury returned to the

courtroom).

THE COURT: All right. Mr. Talasnik, you may call your next witness.

MR. TALASNIK: Thank you, Your Honor, the State calls Detective Lieutenant Ray Welsh.

R A Y M O N D F. W E L S H, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALASNIK:

Q. Lieutenant, would you tell us where you are employed?

A. City of Margate Police Department.

Q. How long have you been with the Margate Police Department?

A. As of this date, about fourteen and a half years.

Q. You're currently the rank of lieutenant?

A. Yes, sir.

Q. And how long have you been with the Detective Bureau of Margate?

A. Five years.

Q. How long have you been a lieutenant?

A. Since about 1980.

Q. Can I assume from your rank of

lieutenant that you were originally a patrolman, sergeant and on up?

A. Yes, sir.

Q. I want to ask you whether you became involved in the investigation into the death of Gloria Simonelli in April of 1988?

A. Yes, sir, I did.

Q. I want to direct your attention not to the initial investigation, but to the date on the 12th of May, a Thursday in 1988. Did you receive some notification with respect to the arrest of Richard Highlander?

A. Yes, sir, I did.

Q. At that time was there already a warrant in existence for Mr. Highlander's arrest?

A. Yes, sir.

Q. What information did you receive about the arrest of Mr. Highlander?

A. I received a telephone call from I believe Investigator Porcelli from the Atlantic County Prosecutor's Office. He advised me that Mr. Highlander had been apprehended in Columbia, South Carolina by the FBI.

Q. As a result of learning that, what did you do?

A. I was requested to accompany Investigator Al Juliano to Columbia for the extradition of Mr. Highlander.

Q. Did you in fact travel with Investigator Juliano to Columbia, South Carolina?

A. Yes, we departed the same evening.

Q. Do you recall about when you arrived in Columbia, South Carolina?

A. Around 2 o'clock in the morning, give or take an hour.

Q. Later that morning what was the first stop that you made?

A. First stop was the local FBI office.

Q. And what was your purpose in going there?

A. We met with the investigating agents, Agent Clemens and I don't recall the other fellow's name at the moment, but we met with them at that office.

Q. And why did you meet with them?

A. They accompanied us to the local jail where we escorted Mr. Highlander before the

federal magistrate for the purpose of an extradition.

Q. Did you get a chance to see Mr. Highlander at that local jail?

A. Very briefly, yes.

Q. In that brief contact, how did he seem to you?

A. He seemed fine.

Q. Now, what was the first stop that was made that morning with Mr. Highlander?

A. Would be the federal courthouse where we appeared before a magistrate.

Q. And was there some kind of a hearing?

A. Yes, sir.

Q. What was the next thing that happened?

A. Well, he waived extradition there and he was turned over to the custody of the county authorities in Richland County, South Carolina.

Q. And what sort of thing happened there?

A. We had to go to another court, their county court for another extradition hearing.

Q. During this morning, were you able to observe Mr. Highlander?

A. Yes.

Q. How did he seem to you?
A. He seemed fine.
Q. Did he make any requests during the course of the morning?
A. Yes, sir, during the second hearing he requested to be allowed to return to the Richland County Jail to shower and get a change of clothing.
Q. Was that request honored?
A. Yes, sir.
Q. When was the next time that day that you saw Mr. Highlander?
A. Would have been around around 2 o'clock in the afternoon.
Q. Where did you see him?
A. At the Richland County Jail.
Q. For what purpose?
A. We interviewed him regarding the homicide.
Q. When you began to interview Mr. Highlander, did you have a chance to observe him physically?
A. Yes, sir.
Q. How did he seem to you?
A. He seemed very friendly, he wanted

to -- very cooperative. Did not give us any kind of a hard time or anything like that. He was quite friendly.

Q. Now, what would be the procedure that you would follow before attempting to interview someone who had been charged with murder?

A. That person would be advised of their constitutional rights as per Miranda.

Q. Were you present for that process?

A. Yes, sir, I was.

Q. I have a document that has been marked as S-7 for identification. Like you to look at it and tell me if you recognize what it is.

A. Yes, sir, I do recognize it. This is a rights form that was signed by Mr. Highlander at the jail after Investigator Juliano advised him of the writing which is contained on this paper.

Q. And does your signature appear on there?

A. Yes, sir.

Q. How about the signature of Mr. Highlander?

A. Yes, sir, it does.
Q. After this form was read to him and he signed it, Investigator Juliano and yourself signed it, did you ask Mr. Highlander whether he would be willing to discuss with you the death of Gloria Simonelli?
A. Yes, sir.
Q. And what was his response?
A. He agreed to discuss the matter.
Q. I'd like you to tell us what Mr. Highlander told you regarding the killing, where he began his story.
A. He began his story by laying a foundation, if you will, as far as some of the problems that he and Miss Simonelli were having leading up to the shooting.
Q. What did he describe for you in laying the ground work as you have called it?
A. Well, it would be a series of domestic disputes which took place at the apartment and elsewhere in Margate, the surrounding area. Ultimately the signing of a restraining order by Miss Simonelli and also some criminal charges against Mr. Highlander.
Q. Now, who was it who raised the fact

that these criminal charges existed as against Mr. Highlander?

A. Mr. Highlander.

Q. And what attitude did he have towards these charges as he expressed it to you?

A. He felt that these charges were a cause of many of the problems which led to the shooting.

Q. Did he indicate who it was who had signed a complaint or brought these charges?

A. Yes, it was Miss Simonelli.

Q. Did he discuss with you any efforts that he made to try to get out from under these charges?

A. Yes, he mentioned that he had reached out to her through various means of communication, sending notes, attempting phone calls, sending other persons to try to talk to her on his behalf, and so forth.

Q. Did he indicate whether he had any success in those efforts?

A. No, she didn't want to hear from him, apparently.

Q. As a result of that lack of success, did he discuss with you any concerns he had

about possible effects of these charges being fully prosecuted?

A. Yes, he felt that he was going to prison, that these would violate his probation and that he was going to go back or go to prison as a result of these indictable offenses.

Q. How did he feel based on what he said to you about the prospect of going to prison over these charges?

A. He didn't want to go to prison.

Q. Did he make that clear to you?

A. Yes, he did.

Q. Did he tell you whether he determined to do anything to try to keep out of or prevent himself from having to go to prison?

A. Well, he initially was going to try to talk to Miss Simonelli into dropping the complaints. As it became apparent that that was not going to be the case and she would not talk to him and so forth, he told us that he began planning to kill her.

Q. Did he tell you when he determined to plan to kill Gloria?

A. Approximately a week before the event.

Q. Did he tell you how he planned to kill Gloria?
A. Not at first, not at that point. As I recall he just in very general terms said that he was planning to kill her.
Q. Now, the word planning to kill, is that your word or his?
A. That's what he told us at the Richland County Jail.
Q. That he was planning to kill Gloria?
A. Yes.
Q. And for about how long before the killing?
A. About a week.
Q. Did he indicate what steps he took in preparation for the killing?
A. Yes, he did.
Q. What did he say?
A. That he had gone about obtaining a weapon that someone was holding for him.
Q. What kind of a weapon?
A. I believe it was a .357 revolver.
Q. Go on.
A. He had hired a driver, had rented a car to get away and then went about searching

for her the day of the shooting.

Q. Was there a specific discussion by you as to where he was going to look for her?

A. Yes.

Q. What did he say?

A. He said he knew she drank at the Greenhouse, he checked there. He went by her house earlier that day. He located her car at the Greenhouse, that was around 5:30 in the afternoon.

Q. Did he discuss with you the events of the day that Gloria died?

A. Yes.

Q. Was he able to provide a fairly detailed description of the events of that day?

A. Yes, he was.

Q. How did he describe the events of that day to you?

A. In what respect, sir?

Q. What did he tell you he did the day Gloria died?

A. He had obtained some money from his job or a job, someone owed him some money for some business he had done for them. He had

hired a man, he didn't identify the man at the time we were at the Richland County Jail, to drive him. He rented a car. He went visiting some other people with regard to obtaining a weapon that he had. They had gone to Somers Point, I believe they had a meal there, he and this other fellow, they had gone back to Margate, drove around Margate looking for Miss Simonelli.

Q. Did he describe the process of going around Margate that day looking for Miss Simonelli?

A. Yes, or he said he went by her apartment, I guess, or townhouse on Monroe Avenue.

Q. When did the reference to the Greenhouse come up in this interview?

A. As he was describing searching for her and checking the Greenhouse because he knew that she drank there, that she would frequent this place, he mentioned that it wasn't one of his favorite places and that was where she hung out and he went there looking for her.

Q. Did he indicate in that interview whether he saw any evidence of her being at

the Greenhouse on the day she died?
A. Yes.
Q. What did he tell you?
A. That he saw her car parked outside.
Q. Did he say about when?
A. It was around 5:30 in the afternoon.
Q. Did he describe what he did after seeing her car parked at the Greenhouse?
A. Yes, he and this other fellow left the area. They went to a bar, I don't believe he named the bar at this time. They had a couple of drinks and then they went to someone's house where he told us he used Speedball, which he described as being a mixture of heroine and cocaine.
Q. Did he describe where he and the driver went after that?
A. Yes, well, somewhere back to Atlantic City.
Q. And what else was done in Atlantic City?
A. Well, the gun was obtained at that time.
Q. Who obtained the gun?
A. Mr. Highlander did.

Q. And he told you that?
A. Yes, sir.
Q. Did he tell you what he did after he obtained the gun?
A. Yes, sir, they ultimately returned to Margate.
Q. And where in Margate did they go?
A. To the Greenhouse.
Q. What did he describe for you occurred after they arrived or at the time they arrived at the Greenhouse?
A. At the time they arrived at the Greenhouse they were driving through the parking area and he saw Miss Simonelli exiting the bar with another male named Mr. Sullivan. He got out of the car, he reached under the seat, pulled out the gun, got out of the car, held the gun down at his side, walked over to about ten feet from where they were, pointed the gun at Miss Simonelli, fired one shot at her. With that she began to yell according to him, "Oh, no, I don't believe this is happening," and he fired a second shot at her. He said that he just started firing shots, they just started

coming automatically, or words to that effect, and he fired two shots at her and he fired one shot at the male and then he got away from the area, got back into the car and they fled the area.

Q. He was able to describe for you what he heard Gloria say?

A. Yes, sir.

Q. Was he able to describe for you the number of shots that he shot?

A. During that interview he said the shots came, I'm saying words to the effect of automatically, but he did mention at one point that he fired a total of three shots.

Q. Did he say how these three shots were distributed?

A. He said he fired two at Miss Simonelli, fired one at the male.

Q. Did he go on to describe anything about his flight thereafter?

A. Yes, sir, he had gone around to the side of the Greenhouse, got into the car in which the other fellow was waiting, they left the area, went over the Longport Bridge by way of Ventnor Avenue, north on to the Garden

State Parkway and ultimately ended up in New York City.

Q. Where did all this detail come from?

A. From Mr. Highlander.

Q. Did he tell you anything that he did in New York?

A. Yes, sir, he made a telephone call.

Q. Tell us about that.

A. He called Shore Memorial Hospital in Somers Point from, I believe he said from the Port Authority in New York. He identified himself as Gloria's brother and inquired about her status. He was informed that she had died. With that he hung up.

Q. Was there any further discussion about where he had gone after that?

A. Yes, he ended up on a bus, he said he spent two days riding buses, just wandering on the buses throughout the northeast area here, the mid-Atlantic area I guess you'd want to call it, but he ultimately ended up at an aunt's house in West Virginia.

Q. Was there any discussion with him about how he felt about the shooting?

A. Yes.

Q. What did he say?
A. He told us that Gloria pushed him to it, that she had made a mess of his life, because of her he was going to prison and he just could see no other way out. Consultations with attorneys, the opinions of other people and so forth were not going to his liking. He just had a view, if you will, that he was going to jail and she was the cause of it all and if she was out of the way or unable to testify or would not testify he would not have to go to jail.
Q. During the course of your conversation with him there, was there any indication of remorse for any of this?
A. He said that she got what she deserved, he still loved her in spite of the fact that she was dead, but that she had it coming to her.
Q. After the interview was completed, what next happened?
A. We left the Richland County Jail, went to the Columbia Airport by way of rental car and boarded a flight to Atlanta, from Atlanta to Philadelphia, and were transported by car

back to Atlantic County.

Q. Were you with Mr. Highlander during this transportation?

A. Yes.

Q. And were you with him constantly?

A. Yes.

Q. What about Investigator Juliano?

A. He was also with us. We had a little problem in South Carolina with a credit card problem and Investigator Juliano was called away from where we were sitting. We missed a flight due to the problems and he was trying to arrange airline tickets and so forth.

Q. Now, were there any conversations of a substantive nature between you and Mr. Highlander at the airport?

A. We had much conversation about the case, other things, trivial matters.

Q. Well, let's start with the trivial ones. What kind of trivial things did he talk about?

A. Like I say, we were at the airport a couple of hours sitting there waiting. Everything from girl watching, remarks about kids that were playing there, jokes about

maybe having to hitch-hike up I-95 to get back to Atlantic County, he wanted cigarettes, sodas and so forth. He was asking about what kind of media play he was getting in Atlantic County, what the newspapers had to say about him. He wanted to know how we knew it was him who shot Gloria, he wanted to know who dimed him out, those are his words. He gave specific names as to different people, wanting to know who said what and so forth.

Q. Was there any specific discussion about the case?

A. There was a lot of questioning on his part about the case directed at me, usually when Investigator Juliano was absent. One thing he did say was that he had had his problems here in Atlantic County with the Prosecutor's Office. He did not like Mr. Blitz at all, that's Jeff Blitz, the County Prosecutor. I think he was aware that Investigator Juliano was with the Prosecutor's Office. In fact he asked me who his boss was. I responded by saying Chief Bernard McBride was Juliano's boss, but I

think he knew that Juliano was involved in the Prosecutor's Office so when Juliano would go away he would begin asking me questions about the case.

Q. After the flight where did you take Mr. Highlander?

A. First flight went to, as I said, Atlanta, second flight to Philadelphia. After we were met at Philadelphia Airport by Investigator Pullen from the Prosecutor's Office we were transported by motor car back to the Margate Police Department. We had to make a stop at Bader Field first where we picked up Juliano's car and used that to go to Margate.

Q. What went on in Margate?

A. He was processed by myself, finger printed, photographed, and so forth. At that point he had requested a sandwich. We got him a sandwich, I think a ham and cheese or something like that, cup of coffee was provided to him. We then conducted another interview there.

Q. Ultimately was another statement taken of a more formal nature from Mr. Highlander?

A. Yes, sir.
Q. And in what form did that other statement take?
A. That was a taped statement.
Q. Were you present for that statement?
A. Yes, sir.

MR. TALASNIK: Thank you. Your Honor, I have no further questions for the witness at this time subject to recalling him on that aspect.

CROSS-EXAMINATION BY MR. DAVIS:

Q. Lieutenant Welsh, you indicated as a result of a telephone call you went to Columbia, South Carolina?
A. Yes, sir.
Q. At that time to obtain Mr. Highlander?
A. Yes, sir.
Q. Now, what date was that?
A. I believe it was May 12. I'd have to check my reports.
Q. Had you been working on this crime since the day that it was committed?
A. Yes, sir, off and on. I was interrupted by other things, but I was involved with this thing since the beginning.

Q. You put quite a bit of time into this crime?
A. Yes, sir.
Q. So that when you had gotten that call that Mr. Highlander had been incarcerated in South Carolina, you knew many facts concerning the crime, didn't you?
A. Yes, sir.
Q. And your purpose was going to South Carolina to do what?
A. My purpose was to see if Mr. Highlander would waive extradition and accompany us back to New Jersey and also to see if he would be willing to give us a statement concerning the incident.
Q. Why did you want a statement from Mr. Highlander?
A. To see what his involvement was in the case.
Q. And you thought it was necessary at that time to get a statement from Mr. Highlander at that time, didn't you?
A. Yes, sir, I did.
Q. And when you indicate waive extradition, what does that mean?

A. Mr. Highlander appeared before two judges down there. Both times he agreed to accompanying us back to New Jersey and not -- he did not ask to remain in their custody where he could fight extradition.

Q. So he voluntarily returned to New Jersey with regard to this matter, is that right?

A. Yes, sir.

THE COURT: Mr. Davis, excuse me. Ladies and gentlemen, the reference to extradition refers to a legal proceeding. When someone is found or taken into custody on a warrant in one state and is wanted on charges from a different state, there is a formal legal proceeding known as extradition by which the person is transferred from custody of the state officials in one state to the state officials in the other state. That process can be waived or skipped. That is any person who is in custody may choose to seek a formal extradition hearing in which he has a right to a hearing of sorts in the state where he is to determine whether or not there is a legal basis to have him

transferred back to the state that wants him. He may also if he chooses waive the right to that hearing and agree voluntarily to return to the state that wants him. That's the nature of the extradition process. You may proceed.

BY MR. DAVIS:

Q. When you initially met Mr. Highlander in Columbia, South Carolina, what was his demeanor toward you and Officer Juliano?

A. His demeanor, he did not exhibit any sort of hostility or anything like that. He was relaxed. He was in the custody of those officials there. He later made some comments about his point of view, but --

Q. The question was, what was his demeanor toward you and Officer Juliano?

A. He was fine, no problems.

Q. And after he waived extradition you then attempted to take a statement from him, is that correct?

A. Yes.

Q. Where did you attempt to take this statement?

A. In the Richland County Jail.

Q. Was anyone with Mr. Highlander at that time?

A. Just three of us, myself, Investigator Juliano and Mr. Highlander.

Q. Was he represented at that time?

A. No, sir, he was not.

Q. And you read to him what you called the Miranda warnings?

A. I didn't read them, Investigator Juliano did.

Q. And you indicated that he indicated that he understood everything?

A. Yes, sir.

Q. Do you know what Mr. Highlander's physical condition was at that time?

A. He appeared to be fine to me.

Q. Now, your initial attempt to take a statement from him was for a taped statement, wasn't it?

A. Yes, sir.

Q. Why did you want to take a taped statement?

A. Just our standard operational procedure, sir.

Q. Did he give you a taped statement?

A. Not at that point.
Q. He refusted to give you a taped statement?
A. Yes, sir.
Q. Then what did you do when he refused to give you a taped statement?
A. He said he'd discuss the matter, but he didn't want to be on tape.
Q. What did you do?
A. We discussed the matter.
Q. Now, how did you discuss it? When I say how did you discuss it, did you ask him specific questions?
A. We asked him some specific questions. We allowed him to tell his version of what happened.
Q. When you got to South Carolina, you had a version in your mind, didn't you, of what happened?
A. I wouldn't say I had a version. I'm a very objective individual.
Q. Whether you're objective or not you had a version that was given to you by the various people that you had interviewed and the various investigation reports that you

had read?

A. I had a belief that Mr. Highlander had shot Miss Simonelli.

Q. And you had certain facts surrounding this shooting?

A. Yes, sir.

Q. And when you went there you didn't talk to Mr. Highlander in a vacuum. When you posed certain questions to him you had a reason for posing these questions, didn't you?

A. I would agree with that, yes, sir.

Q. And is it a fair statement to say that when you take a statement from a person such as Mr. Highlander, you want him to admit to you that he did whatever act he's been charged with?

A. That would be fair, yes, sir.

Q. And you also want him to give you certain facts in that statement so that when he makes this admission, it would be a sufficient admission when you come to court to make him guilty of the crimes that he has been charged with?

A. That would be fair, yes, sir.

Q. So that was the purpose of you taking the statement from Mr. Highlander?
A. My purpose was to see what Mr. Highlander had to say about what took place.
Q. And you wanted him to say that he did it?
A. From my point of view, yes, you could say that.
Q. That's what you wanted him to do. That's what you wanted?
A. That's fair, yes, sir.
Q. Now, in wanting that, when you posed questions to him you posed questions in certain areas, didn't you?
A. Yes, sir.
Q. And if he didn't cover an area that you wanted him to cover, you would question him in that area?
A. Well, yes and no.
Q. Now, did you write down every question that you asked Mr. Highlander?
A. No, sir.
Q. Did you write every answer that you asked -- that Mr. Highlander alledgedly gave to you?

A. No, sir.
Q. How did you do it?
A. I spoke with him. He, myself and Investigator Juliano sat down at a table and we just talked.
Q. You just talked?
A. Yes, sir.
Q. As you're just talking what are you doing? Are you writing?
A. I wasn't.
Q. Did you ever make a report on this?
A. I did not, no, sir.
Q. So you're indicating to me today, what you've indicated to the Court today is something something that you recollect that happened over a year ago?
A. That's correct, that's why I'm a little ambiguous as far as times and dates.
Q. And you don't know today for a fact exactly what Mr. Highlander's answers were, do you?
A. Yes, I do.
Q. In fact the answers that you're giving us today are conclusions you reached through allegedly talking to him?

A. The answers I gave today are what Mr. Highlander told me.

Q. What's the first question you asked him?

A. I don't recall the exact question.

Q. What is the first question you asked him? You don't know, do you?

A. Probably if he wanted to give a statement.

Q. Not probably. What is the first question you asked him after he indicated to you yes, I will give a statement?

A. No, sir, I don't recall the first question.

Q. What is the second question you asked him?

A. I don't recall.

Q. What's the first answer he gave you?

A. I don't recall.

Q. What's the second answer he gave you?

A. I don't recall.

Q. What's the last answer he gave you?

A. I don't recall.

Q. What's the last question you asked?

A. I don't recall the last question.

Q. Isn't this testimony, officer, that you're proffering today, isn't this information that you have received since that day, things that you have read, things that you have heard?

A. No, sir.

Q. Can you decipher exactly what he told you in South Carolina as opposed to what he told you when he came back to Margate City?

A. Not word for word, no, sir.

Q. After you spoke to Mr. Highlander, you and Mr. Juliano, I assume it was Mr. Juliano?

A. That's correct.

Q. And you wrote up or Mr. Juliano wrote up this so-called report, did you ever take this report and allow Mr. Highlander to read it and say, Mr. Highlander, is this your recollection of what happened?

A. The police report?

Q. The report regarding just this statement, nothing else, talking about this statement.

A. No, sir, I don't believe it did.

Q. Did you write the report?

A. I didn't write it, no, sir.

Q. Have you ever read it?
A. Yes, sir.
Q. When is the last time you read it?
A. Last night.
Q. And that's what refreshed your recollection, what you read last night?
A. It refreshed some things, yes, sir.
Q. Not what you heard in South Carolina. Now, did you discuss with Mr. Highlander or did you question Mr. Highlander with regard to his feelings toward Miss Simonelli?
A. Yes, sir, there was some discussion about his feelings towards Miss Simonelli.
Q. And he told you what his feelings were, didn't he?
A. Yes, sir, he loved her.
Q. And during the course of telling you how much he loved her, he also told you how distraught he was about what she had done to him?
A. That's correct, sir.
Q. And isn't it a true statement to say that the thrust of his conversation was the ruins that she had put his life into, at least the ruins that he thought she had put

his life into?
A. Yes, sir, he blamed her for everything.
Q. And he indicated to you that he had attempted to reconcile with Miss Simonelli?
A. That's correct.
Q. And that she refused?
A. That's correct.
Q. Now, you indicated he planned to kill Miss Simonelli. Did you ask him about that?
A. No, I think as we discussed the matter, the events, he freely admitted that he was beginning to plan to kill her.
Q. Let's get to the day of the murder, get to the day of the homicide. Did you speak to him about that day?
A. Yes, sir.
Q. Did you speak to him about moments before this incident happened?
A. Yes, sir.
Q. Did you ask him about his feelings moments before it happened?
A. I think I was asking him what happened moments before it happened.
Q. Did you ask him his thoughts moments

before this killing happened?
A. I don't recall any specific questions during that interview in the county jail about his thoughts in the moments prior to.
Q. And did you ask him what made him do what he did after he got out of that vehicle? Did you talk about that incident right there?
A. Oh, yes, sir.
Q. Did he tell you?
A. Yes, sir.
Q. Did he tell you why he shot Gloria?
A. Yes, sir.
Q. Did he tell you about Pat Sullivan?
A. He didn't name him, but he told me about Pat Sullivan.
Q. In fact when you used the word Pat Sullivan in your answer to Mr. Talasnik, Mr. Highlander never gave you the term Patrick Sullivan, did he?
A. No, sir, he did not. He did not know the man.
Q. And he told you what it felt like for him to see Gloria with Pat Sullivan or what turns out to be Pat Sullivan?

A. Yes, sir.
Q. Now, you've indicated he hired a driver.
A. Yes, sir.
Q. Did he tell you why he hired the driver?
A. As I recall there was some mention of a license problem.
Q. He hired a driver because he himself, Richard Highlander, didn't have a license and he couldn't drive, isn't that true?
A. That sounds familiar, sir, yes, sir.
Q. He never told you that he and that driver planned to go down there and kill Gloria Simonelli?
A. No, sir, he didn't -- he gave no indication of the driver being planned to be part of the shooting.
Q. Do you know the driver?
A. I do now.
Q. Well, did you investigate the driver after this incident?
A. I did not. The Prosecutor's Office did.
Q. Now, was there any indication --

THE COURT: Excuse me, we're going to stop at this point.

MR. DAVIS: I only have a couple more. Well, that's okay.

THE COURT: Ladies and gentlemen, we'll recess now, come back right after lunch and finish up with this witness. See you at 1:30.

(Jury leaves the courtroom).

THE COURT: During the recess, Lieutenant, please don't discuss the substance of your testimony with anybody.

(Whereupon a luncheon recess is taken).

(Jury returned to the courtroom).

THE COURT: Mr. Davis, you may proceed.

BY MR. DAVIS:

Q. Officer, as a result of your investigation did your department charge Mr. Chambers with anything, any crime?

THE COURT: Mr. who?

MR. DAVIS: Chambers.

THE WITNESS: Mr. Chambers, no,

sir.

MR. DAVIS: That's all I have.

RE-DIRECT EXAMINATION BY MR. TALASNIK:

Q. Lieutenant, I take it that this interview really didn't take place and that you made it all up so that you could have the final nail for the coffin, is that right?

A. That's not right, sir.

Q. Well, where did the information come from that you've testified about today?

A. From Mr. Highlander.

Q. You did in fact prepare a record of this incident, did you not?

A. Of which incident, sir?

Q. Of traveling to South Carolina and meeting with Mr. Highlander and bringing him back home?

A. Yes, sir, I believe I referred everything to Investigator Juliano's report in my report.

MR. TALASNIK: I have a two page document to be marked.

(Exhibit S-53, supplemental report, was marked for identification).

MR. TALASNIK: I would show the

document to Mr. Davis.

BY MR. TALASNIK:

Q. Lieutenant, I'm going to show you a two page report that's now been marked S-53 for identification. I'd like you to look at it, tell me if you recognize what it is.

A. Yes, sir, this is a supplemental investigation report prepared by myself.

Q. Is there an indication in that report that you traveled to South Carolina with Investigator Juliano?

A. Yes, sir.

Q. And is there a further indication that Mr. Highlander was interviewed by the two of you in the Richland County Jail on the afternoon of the 13th of May?

A. Yes, sir.

Q. What is contained in that report with respect to the details of the interview with Mr. Highlander?

A. For details of this interview, refer to Juliano's report.

Q. Who is Juliano?

A. That's Investigator Al Juliano from the Atlantic County Prosecutor's Office.

Q. Would it be unusual for two officers to be present and only one to write up the details of the interview?

A. No, sir, it's not that unusual at all.

Q. Was there an agreement between you and Investigator Juliano that his report would summarize the details of the interview?

A. That's correct, sir.

Q. Now, since the writing of that report by Officer Juliano, have you had occasion to look at his summary of the oral interview with Mr. Highlander?

A. Yes, sir.

Q. And in your opinion does it accurately summarize the details that were provided by Mr. Highlander in this interview?

A. Yes, sir.

Q. You were asked by Mr. Davis with respect to what Mr. Highlander may have said about the driver, the role of the driver that took Mr. Highlander around on the day that Gloria died, do you recall that?

A. Yes, sir.

Q. What role did Mr. Highlander attribute to this man who drove him around?

A. That he had had this man drive him because of problems with his driver's license.

Q. Did he at any time describe this man as a knowing accomplice, as someone who was involved in a plan to kill Gloria?

A. No, sir, not that I recall.

Q. You indicated to Mr. Davis that Mr. Highlander blamed Gloria for forcing him to do this.

A. Yes, sir.

Q. What did Mr. Highlander explain to you he meant by that, that he was blaming her?

A. That her actions with regard to court documents signed against Mr. Highlander and so forth pushed him to take action against her to stop her from prosecuting him.

Q. Mr. Davis also asked you whether Mr. Highlander told you why he shot Gloria, do you recall that?

A. Yes, sir.

Q. Did Mr. Highlander tell you why he shot Gloria?

A. Yes, sir.

Q. What did Mr. Highlander say?

A. That she had pushed him to a point where he had no other recourse but to kill her.

Q. Pushed to what point?

A. Pushed to the point in order for him to stay out of jail, his only recourse was to do away with her.

Q. Before you heard it from Mr. Highlander did you know for a fact that the murder weapon was a .357 revolver?

A. I didn't know for a fact that the weapon was a .357.

Q. Before you heard it from Mr. Highlander did you know for a fact that Mr. Highlander knew that Gloria frequented the Greenhouse Restaurant?

A. No, sir, I did not know that.

Q. Before you heard it from Mr. Highlander did you know for a fact that three shots were discharged at Gloria and her companion?

A. No, sir, we were unsure of that until he told us.

Q. Before you heard it from Mr. Highlander did you know for a fact that one

of those three shots was directed at the companion?

A. No, sir, I did not.

Q. Before you heard it from Mr. Highlander did you know for a fact that between the first and second shot Gloria said, "Oh, my God, I don't believe this is happening to me"?

A. No, sir, I did not.

Q. Was there any discussion with Mr. Highlander with respect to the shot that was fired at Gloria's companion?

A. Yes, sir.

Q. And how he felt about that?

A. Yes, sir.

Q. Tell us about that conversation.

A. This was at the Richland or Columbia Airport. I was seated with Mr. Highlander in the terminal. He began -- during this questioning he asked about the gentleman who was with Gloria Simonelli as they came out of the bar. He wanted to know what the relationship was between she and him. I explained to him that there was nothing romantic, no romantic involvement whatsoever,

that he was just someone she knew from work and just happened to run into while she was at the Greenhouse and was walking out of the bar with her, there was nothing to it, and with that he says, well, that just proves it, he says, there's a God. I said, well, Rich, what do you mean by that? He said, well, he didn't deserve to get hurt so he didn't get shot and he told me he did fire at the man.

MR. TALASNIK: Thank you. No further questions, Your Honor.

THE COURT: Mr. Davis.

RECROSS-EXAMINATION BY MR. DAVIS:

Q. Lieutenant, you knew before you spoke to Mr. Highlander on May 13 that Gloria Simonelli frequented the Greenhouse, didn't you?

A. I believe the question that the Prosecutor asked me was if I knew what Mr. Highlander knew about her frequenting the Greenhouse.

Q. You knew before May 13 when you spoke to Mr. Highlander that Gloria Simonelli frequented the Greenhouse Bar, didn't you?

A. I knew from what other witnesses had

told me, yes.

Q. You knew before May 13 when you spoke to Mr. Highlander that a .357 magnum was supposed to have been the murder weapon, didn't you?

A. No, sir, I didn't know that for a fact.

Q. You had heard it before, hadn't you?

A. I don't believe I had heard it. It was suggested as a possibility, but we didn't know for a fact.

Q. In fact you don't know for a fact today what the murder weapon was, do you?

A. No, sir, I don't, all I know is what Mr. Highlander told me.

Q. That wasn't the question. Today you don't know for a fact what the murder weapon was, do you?

A. It depends on what one's interpretation of a fact is, sir.

Q. Fact is have you ever seen the murder weapon?

A. Fact is I haven't.

Q. So you don't know what the murder weapon was, do you?

A. I only know what I was told, sir.
Q. And you were told it was a .357 magnum before May 13 when you talked to Mr. Highlander?
A. There was speculation that it was a .357.
Q. You also knew that three shots were fired before you talked to Mr. Highlander on May 13.
A. I didn't know that for certain. Depended on who you talked to.
Q. Well, you talked to the people at the scene of the crime, didn't you?
A. I talked to some of them.
Q. And they told you, didn't they?
A. Some people said two, some people said three.
Q. Now, you've indicated to the Prosecutor that you wrote up a report. You didn't write up a report pertaining to what Mr. Highlander supposedly said, did you?
A. Not at the Richland County Jail, no, sir.
Q. In fact in the report that you wrote up, that you wrote up, what did you say in

there with regard to what Mr. Highlander said? How many sentences did you include in your report?

A. I don't have that report right in front of me, but --

Q. I'm going to let you refer again to what has been marked S-53 for identification.

A. In my words?

Q. No, not in your words, what you have written down there.

A. Could you ask the question again, sir?

Q. In your report that you prepared surrounding this May 13 conversation with Mr. Highlander, how many sentences do you have included in there that refer to what he told you?

A. I see one.

Q. One sentence?

A. Yes, sir.

Q. Read that one sentence.

A. During this interview Highlander admitted that he shot Gloria Simonelli and explained some of the reasons for doing it,

and in parentheses, for details of this interview refer to Investigator Juliano's report.

Q. So as far as you're concerned you wrote one sentence pertaining to what Mr. Highlander said?

A. Yes, sir.

Q. Now, what date did you write that report?

A. This report is dated the 13th of May, 1988.

Q. That was how many days after you had spoken to Mr. Highlander?

A. Four days.

Q. Do you know when Mr. Juliano wrote his report?

A. I'd have to refer to his report to get a date.

Q. Let me ask you this, did you sign off on Mr. Juliano's report?

A. No, sir.

Q. As Mr. Talasnik questioned you, it's sometimes procedure that one officer will write the report and the other one will not?

A. Yes, sir.

Q. Isn't it also further procedure that when one officer writes the report that the second officer concurs with, that he signs off?

A. Not necessarily, no, sir.

Q. Not necessarily?

A. No, sir.

Q. Are you and Mr. Juliano in the same office, do you work for the same people?

A. No, we do not.

Q. Now, you further indicated Mr. Highlander never, never implicated Mr. Chambers.

A. To the best of my recollection at this point I don't believe he did.

Q. Your entire testimony today has been based on your recollection, hasn't it?

A. Yes, sir.

Q. Hasn't been made based on anything that you wrote?

A. No, sir.

Q. At the time that you spoke to Mr. Highlander in South Carolina, had you spoken to the FBI?

A. I was present during some discussion

between Juliano and the FBI.

Q. Had you read any information that the FBI had with regard to Mr. Highlander?

A. No, I don't believe I had the opportunity to read their reports prior to me meeting Mr. Highlander.

MR. DAVIS: That's all.

THE COURT: Mr. Talasnik.

BY MR. TALASNIK:

Q. The report that you have before you refers to a report of Investigator Juliano for the details of this interview?

A. Yes, sir.

Q. I'm going to show you a two page single spaced typed document that has been marked as S-12 for identification. I'd like you to look at those two pages and tell me if you recognize what that is.

A. Yes, sir, I do.

Q. What do you recognize those two pages to be?

A. These are supplemental investigation reports from the Atlantic County Prosecutor's Office and the writer is Alfred E. Juliano.

Q. Is there a date on there?

A. Yes, sir.
Q. And what is that?
A. He has it dated May 13, 1988.
Q. Have you ever seen that before?
A. Yes, sir.
Q. What is it?
A. It's a supplemental investigation report of Al Juliano.
Q. And what kind of information is on those two pages?
A. There is information which begins at eleven a.m. that lists myself and Juliano, FBI Agents Davis and Clemens escorting Richard Lee Highlander to a federal extradition in front of a U.S. Magistrate. That's the first paragraph.
Q. By the time you get to the middle of that page is there any discussion about taking an oral interview of Mr. Highlander?
A. Yes, sir, an entry of 2:10 p.m., Lieutenant Welsh and I returned to the Richland County Jail and interviewed Richard Lee Highlander. Goes on to stay --

MR. DAVIS: Objection.

THE COURT: Sustained.

BY MR. TALASNIK:

Q. Do the remaining paragraphs on that first page refer to the details supplied by Mr. Highlander?

A. Yes, sir.

Q. Go to page two. Does the paragraph at the top refer to details provided by Mr. Highlander?

A. Yes, sir.

Q. Paragraph under that?

A. Yes, sir.

Q. All the way down to the bottom of the page?

A. Yes, sir, with the exception being the last paragraph, which is a conclusionary paragraph.

Q. Have you had occasion to read that summary that was prepared by Investigator Juliano?

A. Yes, sir.

Q. Does it compare with your own recollection of that interview?

A. Yes, sir.

MR. TALASNIK: No further questions.

THE COURT: Mr. Davis.

MR. DAVIS: I have no questions.

THE COURT: You may step down Lieutenant. Thank you very much. You may return those documents to the Prosecutor.

THE COURT: That's it for the day, Mr. Talasnik?

MR. TALASNIK: Yes, sir, the remaining State's witnesses will be available when we next resume.

THE COURT: I told you 9:30 and I'm going to change it and make it 10 o'clock as it turns out. Actually again if you get here a little early we can probably be in pretty good shape to move at ten. A couple of thoughts over the weekend. First, as usual, please refrain from, make sure that you refrain from any discussions about any aspects of this case with anybody, including of course among yourselves, and of course continue as I hope you have to ignore whatever media coverage may exist with respect to the case. I remind you over the course of the weekend not to visit in the

area of or at the restaurant in question which when the case is finished you can go to see if you're curious.

Let me suggest also, today is Thursday and of course we won't be back until Monday. I don't want to tell you that you should not give some consideration in your own minds to everything that you've seen and heard this week. It would not be possible for you not to do that and the law does not require that you not do that. You may indeed give some consideration in your own minds between now and then to what you've seen and heard this week. Of course you should keep it in your mind together with what you see and hear next week so that you can consider it altogether when the time comes for you to discuss it.

I would emphasize as should be obvious to you that when the time comes for you to deliberate together and to discuss the matter, you will want your fellow jurors to listen carefully to what you have to say and to give careful consideration to your points of view. In order for them to do that you

will have to be in a position where you are equally willing and able to give consideration to their points of view. Translation, while you should and will think about what you've seen and heard and your reactions to it, you should keep an open mind, not reach any final conclusion until you have heard everything there is to hear in the case and until you've had the opportunity to listen to what your fellow jurors think. At that point you may apply your own views and your own thoughts to everything that you have absorbed and then reach a conclusion, so give some thought to it, decide what you think tentatively about what you've heard, but don't reach any final conclusion and don't close your mind to what will come next week.

That's about all I can think of. The sheriff's office advises me that apparently you have a collective enterprise that you've been involved with. I just want to caution you that you're operating here under license of the court and therefore if there's anything that comes of that, I want

you to understand that we may have to discuss it together, but I'll let you think about that for the next few days. Have a pleasant weekend. See you Monday at 10 o'clock.

(Jury leaves the courtroom).

THE COURT: That last, counsel, was a reference to the fact that the sheriff advised me that the jury has become apparently sufficiently comfortable with each other that they've set up some sort of a joint effort on buying a lottery ticket or a group of lottery tickets. Relax, Mr. Talasnik.

MR. TALASNIK: It's a regular New Jersey lottery ticket, not any kind of --

THE COURT: To the best of my knowledge it's a subscription to the New Jersey lottery weekly drawing. As a matter of fact, so that the record is clear, I just figured out what it's about because I heard on the radio yesterday apparently the pool this week is rather sizeable and the drawing is tonight and I assume therefore that that's what is involved and I'm not a participant

except by the tax that you just heard me indicate I would impose on any winnings which I'll share with you.

Okay. Is there anything else that we really need to be discussing this afternoon?

I'll just indicate for the record one thing I don't think we discussed specifically this morning. We had a relatively lengthy chambers conference this morning which is not on the record and doesn't need to be at this point in terms of substance, except that our focus this morning was on the content and nature and manner of presentation of the charge and specifically the verdict sheet in the first phase of the trial. We discussed various ways of addressing some of the issues that might be posed, including the murder/manslaughter issues, the implications of the various forms of manslaughter, including the aggravated and reckless manslaughters and some discussion about the possibility and implications of an intoxication issue. I don't say all that now to press for any rulings or agreements, but

simply to indicate that we discussed it. I will by Monday be able to give you some form of at least tentative concept for a verdict sheet and a rough outline of what I anticipate the charge might look like. Again when I present that to you Monday, that will be for discussion purposes and I will solicit then as I do now any input that either of you has with respect to the content of the charge and the manner of layout of the verdict sheet. Does that about cover us? Okay, see you Monday.

(Adjourn)

C E R T I F I C A T I O N

I, GERALD W. ABARNO, A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER OF THE STATE OF NEW JERSEY, DO HEREBY CERTIFY THAT THE FOREGOING MATTER IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN AT THE TIME AND PLACE HEREINBEFORE SET FORTH.

GERALD W. ABARNO, CSR
OFFICIAL COURT REPORTER
LICENSE NO. XI00326

DATE: 10/10/89

A-59-89T4

Part I
pgs. 1-108

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

REC'D
APPELLATE DIVISION
JUL 11 1990
Clerk

STATE OF NEW JERSEY,

COMPLIANANT,

VS.

RICHARD LEE HIGHLANDER,

DEFENDANT.

TRANSCRIPT OF
TRIAL

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

AT: ATLANTIC COUNTY COURTHOUSE
MAYS LANDING, NEW JERSEY

ON: MONDAY, JUNE 19, 1989

B E F O R E:

THE HONORABLE STEVEN P. PERSKIE, JSC

ORDERED BY:

JAMES JUKES, DEPUTY PUBLIC DEFENDER

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

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ASSISTANT PROSECUTOR, ATLANTIC COUNTY
ATTORNEY FOR STATE OF NEW JERSEY

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T

I N D E X

WITNESS:	D	C	RD	RC
JUDY BRYARS				
Mr. Talasnik	20		57	
Mr. Davis		47		63
Mr. Preston				
JAMES DAIVS				
Mr. Talasnik	66		118	
Mr. Davis		96		123
Mr. Preston				
MICHAEL CLEMENS				
Mr. Talasnik	132		159	
Mr. Davis		146		166
Mr. Preston				
JOHN HANNIGAN				
Mr. Talasnik	170			
Mr. Davis				
Mr. Preston				
CRAIG RUMMLER				
Mr. Talasnik	185			
Mr. Davis				
Mr. Preston				
AL JULIANO				
Mr. Talasnik	192			
Mr. Davis				
Mr. Preston				

EXHIBITS:		ID	EV
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(The following is heard in open court out of the presence of the jury at 10:15).

THE COURT: Counsel, good morning. For the record, I will indicate, as I have informally to defense counsel, Mr. Talasnik, I'm in the process of preparing and hope to have for you by tomorrow a draft of my proposed charge in the first phase of the trial. It's my present contention to commit it all to writing, to have you react to it before we get to that phase, and then once I have finalized the language and read it to the jury, it will be my intention to deliver to the jury room a couple copies of the text of it so they may refer to it during deliberations. I am writing it following the layout of the verdict sheet as I circulated it to you last Friday. I believe in -- in what, for me, is such, my final form, of course, subject to any input I get from you.

MR. TALASNIK: Your Honor, I did have occasion to examine the proposed jury form, and I do have an objection to its form. I don't know whether the Court wants to deal with that now or at some future time.

THE COURT: I'll hear it now but I don't know whether we'll deal with it now but I'll hear you.

MR. TALASNIK: Your Honor, I think that with respect to the verdict form, that it is more complicated than need be, and that there may be an attempt to do on the jury verdict form that which is already adequately handled as part of the jury charge.

Contained within the model jury charge are references to definition of purposeful, the definition of knowing, the definition of the passion provocation. which can reduce murder to manslaughter. The definition of recklessness and the added component of under circumstances manifest extreme indifference, and also the Court has, in the past, woven into the charge at the appropriate time, probably after defining purposeful and knowing, the definition of intoxication, the extent to which intoxication can reduce murder to manslaughter or aggravated manslaughter, depending upon the standard set forth in State vs. Cameron. All of that being said, I think that the jury verdict form need not group the various charges

together, that the appropriate thing to do under the heading murder slash manslaughter of Gloria Simonelli is to have five questions, the first as to the charge that the defendant purposely or knowingly caused the death of Gloria Simonelli by his conduct; guilty or not guilty. Question number two would be the non-capital definition of murder; three, four and five, the various forms of manslaughter, and this passion, provocation or reckless manslaughter. It's not necessary for the jury to be focused to any particular grouping, given the fact in the charge they have already been explained, the extent to which passion provocation enters into their judgment, and the fact to which intoxication may enter into their overall judgment, and as a result, I have -- I prefer that the more standard jury verdict form be used -- be used, that under the heading of murder/ manslaughter, you have five separate distinct questions, so that the jury is free to find guilt or innocence where ever they see fit.

THE COURT: Okay, I understand. All right, my own thinking on it isn't complete yet. I spent some time yesterday thinking about

exactly that as I was writing around this form. It is certainly true, and we're not going to decide this issue now, I'll just give you my own reaction at the moment and we'll talk about it in more detail once my own thinking is closer to the end than it is now, it is certainly true that all of what you say is so. I'm not comfortable, frankly, with the layout of the model charge on that subject, particularly since the model was drafted before the Gerald case, made the distinction that it makes between the one kind of murder and the other. In my view, the break point among the five charges is between the three charges, the three versions that require a showing of purposeful or knowing conduct, that is to say, murder, capital murder, non-capital murder and passion provocation, manslaughter, all of which require purposeful or knowing conduct, and the aggravated manslaughter and reckless manslaughter, which require as a mental state recklessness under respective circumstances. To me, you don't get to the mental state of recklessness if you have found purposeful or knowing conduct. Therefore, my thinking at the moment is that I should address

the jury's examination first to the question of whether there is purposeful or knowing conduct, if there is purposeful or knowing conduct, then I don't ask the jury as an included offense, because manslaughter is not separately indicted, and I therefore, in my view, don't ask the jury to address aggravated manslaughter or reckless manslaughter if they have found purposeful or knowing conduct.

The trick to it, or the difficulty to it, logically, as well from the point of view of the examination of the statute, is that one version of manslaughter still requires purposeful or knowing conduct, which is the passion provocation manslaughter, and therefore, the question becomes which group do you put it in or do you make it all one group. As I've told you, my own thinking on the subject is not finalized. I'll consider what you're saying here and I'll let you know probably by tomorrow what my own thinking is, then once I formalized it and put it in writing, everybody can take a shot at it. But I gave it substantial thought yesterday, and as I've said, given that I'm dealing here with included offenses, by and

large, I felt it was inappropriate to ask the jury to consider something that isn't stated until they have first made a determination about what was.

There is one other little wrinkle, and I guess I don't need to call it a little wrinkle, because it's an important question, and that is that the phrase included offense may be begging the question. Phrased another way, I am not sure that the passion provocation manslaughter charge, which I will give in some form or another, is properly denominated as an included offense, given that it contains all of the elements of the murder with an additional concept that the State must disprove, as distinct from the aggravated manslaughter and reckless manslaughter which, in a traditional view, may be considered as included offenses of murder.

MR. TALASNIK: See, my problem, Your Honor, is that both the concept of passion provocation and the concept of intoxication are issues that have to be disproven by the State, and that there is no particular superiority among those two considerations that the jury

must, of necessity, consider one before considering the other.

THE COURT: Oh, I think logically, or legally there is not, but I think logically there very definitely is. Let me show you how, because this is what I spent four hours yesterday working through. I think it makes the most sense to address their attention first to passion provocation, and here's the reason. First, I would have defined capital murder and non-capital murder, among other things, as requiring purposeful or knowing conduct, and defining that conduct. I'll then introduce the concept of passion provocation as saying even, if you find purposeful or knowing conduct, this may be manslaughter under passion provocation, if you find that the State has failed to disprove this and this, disprove passion provocation, but in order to find him guilty of any one of those three charges, the State must still prove, beyond a reasonable doubt, that he acted purposely or knowingly. That's a common thread to each of those three. It's at that point where I have emphasized, or reiterated that purposeful or knowing conduct is a

necessary element to each of those three charges that, in my view, I should then introduce the subject of intoxication, because in this context, intoxication goes to attack the finding of purposeful or knowing conduct, which is a common element to those three, but not to the other two, so therefore, in my view, the way it most logically flows is to introduce the three elements -- introduce the elements of the three comparable charges, that is to say capital murder, passion provocation manslaughter, define them, differentiate them, compare them, then point them to that which links them, the mental state, using intoxication there to focus on the mental state, and then address, if you have found by reason of the lack of a mental state or any other reason, that he's not guilty of any of those three charges, then you must consider whether he might be guilty of this one or that one, meaning aggravated manslaughter or reckless manslaughter. That's where my logic is today.

I suggest to you that you do two things. Number one, let me finish my thinking; number two, let me exhibit to you the document that I am in the process of creating that

articulates it, lays it out to that count and to my thinking, you can then take your best shot.

MR. TALASNIK: Okay, the only other comment I have is with respect to the indication on the asterick on the first page, that if defendant is found guilty, A) the jury determine whether or not the death penalty will be imposed. I understand that there is an obligation to advise the jury that that is the capital murder count. My preference would be, however, that Your Honor use the same language that is contained in your penalty proceeding opening remarks, that in the event defendant is found guilty of, whether it's A or one, the Court will yet determine, the jury will then be and then to use Your Honor's words, be required to determine the fitting and appropriate penalty for that crime, or alternatively, be required to determine whether the death penalty is the fitting and appropriate sentence. Just so --

THE COURT: The first one I can't do, because the case, forget which one, one of the last ones, Zola or one of the most recent ones, said that I must instruct the jury and put in the verdict sheet the notion that that is the

charge, that may be the death penalty. The last variation of that theme may be appropriate.

MR. TALASNIK: Yes or no, I believe that that language --

THE COURT: Whether or not the death penalty is the appropriate sentence.

MR. TALASNIK: Yes, and that would be my application, because then, that's a common grouping of words that the jury will hear at the various intervals, and I believe that's the grouping of words that is referred to by the cases. Those are the only comments or questions that I had with respect to the jury verdict form.

MR. PRESTON: Judge, if I may be heard as to the last point. Indeed, I have one small problem with that, and that is that we are told that the jury cannot be led to believe that the responsibility for the verdict lies elsewhere. My problem with the last proposal by the prosecutor, it leads the jury to believe that all they are going to do is determine the appropriateness of it, and not whether it's going to be imposed, and I think that there is a subtle distinction there when they are going

back to make a deliberation with information, which we're told they must have, that we're telling them that it's only advisory, or inferring that it may be only advisory, so I think that problem needs to be corrected, and I don't insist on any particular language on it right now. The prosecutor may have a good point in terms of consistency, but I think you have to avoid the last problem.

THE COURT: I'm not too worried about that. We get to the penalty phase, as you can already see in the language I have given you, which you have, and talk about when they need to talk about it. In each instance, and there are many, I refer to the notion that the death penalty, the jury is required to determine whether the death penalty is the fitting and appropriate and fitting punishment, and if they do so that is the sentence that will be imposed.

In my view, it is not necessary, or even particularly appropriate to make that point of emphasis at this point. Frankly, it is only because the Supreme Court has said that we must that I feel that it is even appropriate to address the jury's attention to that in this

phase of the trial. I have already instructed the jury as a matter of general consideration in this phase that they are not to give any thought to the question of punishment, and in general, that is the basic law which applies in every case, and as the rule applies in this case. The Supreme Court has carved out the exception that the jury must be advised in rendering a determination of guilty or innocence, as to which charge imnplicates the possibility of the imposition of the death penalty. I'm going to do that, but I am not going to spend any time or any space in the verdict sheet to do that where I don't absolutely have to.

MR. PRESTON: Judge, I'm not asking you to spend any time and space. What I'm asking is that the information that you do convey at least be consistent with the case law.

THE COURT: Okay.

MR. PRESTON: I understand your point. I am satisfied that I achieve consistency by the use of the phrase fitting and appropriate penalty or punishment. I understand your point about focusing the jury's attention on whose responsibility it is. In my view, all

of the cases that talk about that, Zota and all of the others, do so in the context of the penalty phase, and I'm aware of what I need to do then.

MR. PRESTON: Judge, it's probably likely that my concern can be addressed in less than three words. I hope that will not clutter the verdict sheet too much, but the other issue that I want to raise is the issue that the prosecutor discussed with regard to the layout of the first charge alternatives. I asked -- I add one other thing for Your Honor's consideration.

THE COURT: You agree with him?

MR. PRESTON: No, I do not, I do not follow his thinking on that. My inclinations are more towards Your Honor's suggestion, and I add one other thing for consideration. With respect to the passion provocation charge, it is more in the nature of an affirmative defense wherein the jury has already found an aggravating factor and would be checking in terms of guilty with respect to that element of the offense.

THE COURT: Where did you lose

me. Try that again.

MR. PRESTON: Okay. The jury is making a decision as to whether purposeful or knowing exists or does not exist, and if it doesn't exist, then looking at reckless as a state of mind.

THE COURT: Right.

MR. PRESTON: In the manslaughter, that is, passion provocation, if it can be found at all, it can only be found if the jury finds yes, or guilty as to the element of purposeful or knowing.

THE COURT: Right.

MR. PRESTON: And therefore, it's more in the nature of an affirmative defense. The character of the manslaughter is different than --

THE COURT: That's right, except that I won't -- you're right in substance, except I wouldn't call it, or even suggest that it is an affirmative defense.

MR. PRESTON: I don't suggest that it is. I say it functions along parallel lines.

THE COURT: I agree.

MR. PRESTON: With the other,

we're talking about negating an element of the offense, the mental element of the offense, and therefore, since logically, the structure of -- the way the law structures the thinking process, I don't think it's wise to present to the jury a format which invites them to think in logical patterns that are inapposite to what the law is structuring.

THE COURT: Is that -- do I understand you to say by all of that that the proposed structure that's been outlined here is what you think appropriately accomplishes that, or you're not. I don't know whether you're telling me to change it or not.

MR. PRESTON: It -- I'm not asking to you to change it now, Judge. What I'm saying is that in terms of between the proposal that the Court has made and the proposal that the prosecutor has made in the logic he's following, I think the Court's instructions tracks the law better and is more appropriate.

THE COURT: I understand, I accept that for the moment. You're not bound by it. As I've told you, my own thinking on the subject is not completely finalized. I spent, as I've

indicated, a good deal of time yesterday working on it, and I want the opportunity, frankly, to discuss it some more with you and with some of my colleagues before my own thinking is finalized, and I hope that I will be able to get to you by tomorrow my working draft of everything I propose to say, how I propose so to say it.

Now, by the way, Mr. Davis, there is at least one paragraph in my proposed charge that I've written up that is there against eventuality, that is to say, the instruction regarding the defendant's not testifying. I, at this point, don't know whether he's going to testify or not, and if he doesn't, I don't know whether he wants me -- I'm not asking now -- to give that provision. It's in there because I can always take it out. I want to put it in there so that you would be able to see how I would say it and where I would say it in the charge, and if it becomes relevant to begin with, you can make your determination with him as to whether you want me to see it.

MR. DAVIS: Okay.

THE COURT: But the fact that it's

in there doesn't mean, obviously, that I'm not aware that it might not come out.

MR. DAVIS: Okay.

THE COURT: I have a subpoena issued by Mr. Davis -- issued by me on Mr. Davis' request, Steven Heywood has been produced, having him remanded to the County Jail. What's this morning?

MR. DAVIS: The first witness is Judy Bryars.

MR. TALASNIK: Yes, Your Honor.

THE COURT: Sheriff, would you ask the jury to join us.

(The following is heard before the jury at 10:35).

THE COURT: Ladies and gentlemen, good morning. Nice to see you again, a dollar poorer and a lot wiser. I guess it's a good thing for the case that you didn't win, because the sheriff suggested the possibility that if you did, none of you would have shown up. I guess I have mixed emotions about that.

Okay, as you remember from Thursday, we had recessed at some point in connection with the State's evidence and we'll

now proceed with testimony from the next State's witness. Mr. Talasnik.

MR. TALASNIK: State calls Judy Bryars.

J U D Y B R Y A R S, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mrs. Bryars, where do you live?

A. Olverson, West Virginia on a mountain called Muddy Creek Mountain.

Q. And how long have you lived in West Virginia?

A. Basically all of my life.

Q. Now, in reciting your full name, you included the name Highlander?

A. Yes, sir.

Q. How are you related to anyone named Highlander?

A. My oldest brother is Richard, that's Rick's father.

Q. Now, when you say Rick, who are you referring to?

A. Rick.

THE COURT: Pointing to the defendant.

BY MR. TALASNIK:

Q. So Rick Highlander would be your nephew?

A. Yes, sir.

Q. How long have you known Rick Highlander?

A. All of his life.

Q. Did Rick Highlander ever live in West Virginia.

Q. Yes, sir.

Q. Have you ever lived in any states other than West Virginia?.

A. Yes, sir, I lived in Florida for seven years.

Q. During the time that you lived in Florida, did you have occasion to see Rick grow up?

A. Once in awhile, not very often.

Q. And about when did you move to West Virginia?

A. It's been twenty years ago.

Q. During the time that you've been in West Virginia, have you had much contact with Rick?

A. Not a whole lot, no. When he was -- he came up with his parents on vacation once and I

saw him, and then when he was a senior in high school, he ran away and come up to my house, to to mom's, and he come to my house.

Q. After Rick left high school and for, let's say, the ten years that followed, did you have much contact with him?

A. Not a whole lot.

Q. Would you see him occasionally?

A. Yes, sir.

Q. Did you become aware of his relocating to the Atlantic County area?

A. Yes, sir.

Q. And how did you become aware of that?

A. Well, he would call me on the phone and when Momma died five years ago, he started calling me more often. He called me and expressed regrets about her death and that he would rather just remember her as she was, instead of coming.

Q. Over the course of the five years that followed your mother's death, how frequently would you have contact with Rick?

A. Pretty often. Sometimes like he would call me couple times in a month, sometimes a little bit more often.

Q. All right. There -- there is a microphone in front of you. We might be able to hear you a little bit better if you can kind of sit up, okay? These contacts that you told us about once or twice a month, were they always by phone?

A. Yes, sir.

Q. Did a number of years go by that you never physically saw Rick?

A. Yes, sir.

Q. Do you recall finding out during any of these phone calls whether Rick had a relationship with a girl named Gloria?

A. Yes, sir.

Q. How do you recall hearing about Rick's relationship with Gloria?

A. Well, he told me about it at first, and then I talked with her on the phone.

Q. Do you remember about when it was that you first learned about the relationship that Rick had with Gloria?

A. Oh, I can't say for sure.

Q. Do you remember if it was in the summer or can you relate it to the time of Gloria's death?

A. I think it was in the fall.
Q. The fall, and would that be the fall that came before Gloria's death?
A. Yes, sir.
Q. Now, you've indicated you talked to Rick on the phone about Gloria, and you also talked to Gloria on the phone?
A. Yes, sir. I -- well, she doubted some that I was his aunt, that I wasn't another woman, I think, and then she would talk to me. She was worried about his health, if he was drinking too much and if he had, you know, he had headaches and she was afraid for his blood pressure.
Q. Do you remember having very many phone calls with Gloria?
A. No. It wasn't very many times that I talked to her.
Q. Could you estimate for us maybe how many times that occurred?
A. Maybe two or three times.
Q. Do you remember approximately when the last time it was that you talked to Gloria on the phone?
A. It was after Christmas sometime.

Q. And do you recall just generally the subject matter?
A. It was about Rick, and she was real worried about him, and she was telling me that he was drinking and not taking care of hisself.
Q. All right. Did there come a time when you learned that Rick and Gloria had split up?
A. Yes, sir.
Q. How did you know about that break-up?
A. Rick told me first on the phone.
Q. Do you remember when it was approximately when Rick told you on the phone that he had broken up with Gloria?
A. Oh, probably around February, first of March.
Q. Sometime around in there?
A. Yeah, uh-huh.
Q. And would this be the March that preceded Gloria's death?
A. Yes, sir.
Q. After that conversation when Rick told you about breaking up with Gloria, did you have any other phone conversation with him for, say, the next six or eight weeks?
A. No, sir.

Q. Did you see him at all?
A. No, sir.
Q. During that six or eight week period?
A. No, sir.
Q. I want to direct your attention now to a Wednesday.
A. Yes, sir.
Q. Wednesday the 27th of April.
A. Yes, sir.
Q. 1988.
A. Yes, sir.
Q. Do you recall that day?
A. Yes, sir.
Q. Did you get contacted by Rick Highlander that day?
A. Yes, sir. He -- he called me from Stratford, Virginia.
Q. He called you on the phone?
A. Uh-huh.
Q. Did he tell you where he was?
A. Yes. And he told me he will be in Lewisburg, for me to pick him up. He asked me first what kind of car I had.
Q. Asked you what kind of car you had. And then what did he say?

A. And he told, just told me to pick him up at four o'clock. It was either four, four thirty.
Q. What was the very first thing he asked you when you picked up the phone?
A. He said, Aunt Judy, what kind of car do you have.
Q. Was there any other discussion other than what kind of car you had and that you were to pick him up?
A. He said he had some trouble.
Q. Anything else?
A. Not that I can remember.
Q. What did you do in response to that phone call?
A. I called his Daddy and asked his Daddy what kind of trouble he could be having, and he said.

MR. DAVIS: Objection to what his Daddy said, Your Honor.

THE COURT: Sustained.

BY MR. TALASNIK:
Q. Did you have a discussion with Rick's dad about what kind of trouble he might be in?
A. Yes, sir.

Q. As a result of that conversation, did you know what it was he may be in trouble for?
A. No, sir.
Q. After that, what was the next thing that you did?
A. I went and picked up Rick.
Q. Where did you go to pick Rick up?
A. In Lewisburg at the Greyhound Bus Station.
Q. How did you know where to go?
A. There is only one bus station, he had told me to go there.
Q. All right. When you got there, did you recognize Rick?
A. I recognized him, but he wasn't the way I remembered.
Q. Well, did you see him get off the bus?
A. Yes, sir.
Q. Tell us what he looked like?
A. Well, he seemed thinner, and he -- he was nervous and he was scary looking.
Q. What do you mean scary looking?
A. I don't know. He just was scary looking.
Q. You said that he wasn't the same Rick that you recognized?

A. No, no, sir.
Q. What do you mean by that?
A. Well, see, when I'd seen Rick before, he was a boy, you know, blue jeans and t-shirts, just a kid, you know, and this was a troubled man.
Q. Do you remember how he was dressed?
A. Yes, sir.
Q. And how was he dressed?
A. He had on a maroon jogging suit and white tennis shoes, they were really nice, and a hat.
Q. What did you do when you saw him?
A. Well, I hugged him and he told me to get in the car, he got in the car.
Q. When you got in the car with Rick, what was the first thing that was said to you?
A. I asked him what was wrong.
Q. And what did he say?
A. He said, "I killed Gloria".
Q. How did he say it?
A. Just like that, "I killed Gloria".
Q. Was there emotion in his voice?
A. I don't understand what you mean by emotion.
Q. Well, I mean, you can say I killed

Gloria, those three words, lots of different ways.

A. Well, it was like matter of fact, you know. I thought he was kidding me, you know.

Q. Go on.

A. I just thought he was kidding me. I couldn't believe it.

Q. Did you then begin to drive him towards your own home?

A. Yes, sir.

Q. And what went on in the car as you were driving Rick to your own home?

A. He was telling me that he couldn't change her mind about giving evidence against him and something -- some case that he was involved in, and he killed her.

Q. Did he volunteer to you any details about how he had killed Gloria?

A. Yes, sir, he told me.

Q. What did he tell you?

A. He told me that this guy Mickey drove him and he saw her come out of a club there and was a guy with her, then he went over, when he saw the guy with her, he reached under the seat and got a gun and he walked up with a gun beside it,

his leg, and got up close enough to her and he shot her. And then she said, "I can't believe this is happening", and he shot her again, and he said, "if she'd of kept her F-ing mouth shut, I wouldn't have shot her".

Q. Was there any discussion or did he volunteer any information about the guy who walked out with Gloria?

A. No, he just said he shot him, but he didn't know if he was dead.

Q. He told you that he shot that man as well?

A. Uh-huh.

Q. Was there any discussion in that car ride about the gun?

A. No, just that he told me that this Mickey guy drove him to New York.

Q. All right.

A. And that he got out to call back to Atlantic City at the hospital to see if she was dead, and -- and while he was talking on the phone, that the -- this guy Mickey put the gun in the trunk of the car and when he finished, he just told him he had known him for a long time but he didn't trust him not to kill him because

he had shot those people.
Q. During the car ride home, did Rick volunteer any information about any charges against him that may have contributed to the killing?
A. Well, he said that there was charges pending, you know, and she had information and was going to testify against him and he had tried real hard with attorneys to get her messages and to write her letters and things to get her not to do it.
Q. Did he tell you what he had tried to do to get her not to testify against him?
A. Well, what do you mean?
Q. Well, did he say anything about other things that he had done?
A. Yeah, to try to convince Gloria not to give her evidence against him. Yeah, he said he tried to talk to her through the phone. The phone was changed, unlisted. He tried writing her letters, he got no response. Tried to get people to talk to her, he got attorneys to talk to her, and she wouldn't change her mind.
Q. Did he tell you why he killed Gloria?
A. Because she was going to turn evidence

against him and he would go to prison for fifteen years.

Q. Was he the one who brought up the subject of going to prison?

A. Yes, sir.

Q. And what did he say about that?

A. He didn't want -- he wasn't going to jail.

Q. Just that way, I'm not going to jail?

A. Yeah, yes.

Q. He --

A. As best I can remember.

Q. Was he able to describe for you how he got out of town after the shooting?

A. Yes, sir. I don't remember the roads he said that they took, but he told me, you know, that they were out of there real quick and the guy drove him to New York.

Q. You told us that when he first said "I shot Gloria" that you didn't believe him?

A. No, sir, I didn't.

Q. How long was the car ride until you got home?

A. About thirty minutes.

Q. How did you feel by the time you got

home?
A. I believed him.
Q. Was anybody else living with you in your home at that time?
A. Yes, sir.
Q. And who might that have been?
A. My oldest daughter Kathy and her two babies.
Q. How old are these babies?
A. They're three and four.
Q. Was there any discussion with Rick in the car about whether any of them should be advised what had happened?
A. I asked him please not to say anything in front of Kathy. She was sick in bed, and I was afraid she wouldn't be able to handle it, and he told me I better not tell her.
Q. He told you that you shouldn't tell her?
A. Uh-huh, uh-huh.
Q. Did you take Rick into your home?
A. Yes, sir.
Q. Why?
A. He's my nephew, I love him.
Q. Do you recall about what time in the day it may have been when you and Rick arrived at

your home?
A. Oh, maybe five, something like that.
Q. At night?
A. In the evening.
Q. What about dinner that night?
A. Kathy had dinner in the oven for us.
Q. Was Rick invited to stay for dinner?
A. Yeah. He was really hungry.
Q. Okay. Was there any discussion during the dinner time about his shooting of Gloria?
A. Not during supper.
Q. At some point in the evening, did your daughter retire for the night?
A. Yeah, yeah, her and the babies went on to bed.
Q. Do you know about what time they all went to bed?
A. I can't remember.
Q. Was it already dark?
A. Yeah.
Q. After they went to bed, was there any more discussion between you and Rick about shooting Gloria?
A. Yes, sir.
Q. Where did this discussion take place?

A. In the living room.
Q. And were you seated, standing, what do you remember about it?
A. I was setting in the captain's chair next to the windows and he was sitting in Momma's recliner that I have in my living room.
Q. How was Rick acting at that point?
A. He would just go over it, over it, over it, and then he would get up and show me how he walked up to her and shot her, over and over.
Q. He would get up and show you?
A. Yes.
Q. Could you please get up from your -- from the seat you're in now and show the jury what Rick showed you in the living room of your home about shooting Gloria?
A. I'll try.
(Witness complies).
A. Like he will get up out of the chair and he will tell me about them coming out of the club and he walked up to her with the gun down like this.
THE COURT: Indicating the right arm down by the right thigh.
THE WITNESS: And when he got up

close enough to her he just shot it.

THE COURT: Witness indicating the right arm extended out forward with the index finger pointing.

THE WITNESS: And then he said that is -- she said "I can't believe this is happening", and he said, if she kept her F-ing mouth shut, he wouldn't have shot her.

BY MR. TALASNIK:

Q. How many times or for how long a period of time did Rick go over and over and over this description?

A. Oh, it's between 3:30 and 4:00 before he laid down in my son's room.

Q. And during this time, he's just steady talking?

A. Yes, sir.

Q. During the course of this evening, did Rick describe for you whether he knew where to find Gloria?

A. I think he knew by terms, from what I understand, but she -- he said she had police protection for awhile.

Q. Was there any discussion about anything he had done to look for her?

A. Yeah. He'd drive around and look for her. He'd see her car places.
Q. Did he tell you that he did that, that he drove around or that he was driven around to look for her?
A. Uh-huh, uh-huh.
THE COURT: Is that a yes?
THE WITNESS: Yes, sir.
BY MR. TALASNIK:
Q. Was there any discussion as to for how long a period of time he was doing this?
A. Five or six weeks, the way I understood it, that he tried to get contact with her.
Q. During this evening, was there any discussion about the fellow who had walked out of the bar with Gloria?
A. I can't remember. Just that there was a man with her.
Q. Did he indicate what happened with that man?
A. I understood that he shot him.
Q. Well, what did Rick tell you?
A. I don't understand what you mean.
Q. Did Rick say anything about what happened to the man?

A. He said he shot him but he didn't know if he was dead.
Q. Did he tell you whether he knew that Gloria was dead?
A. Yes, sir.
Q. How?
A. He told me that when he got to New York he called back to the hospital and pretended like he was her brother.
Q. During the course of the evening, did Rick show or say anything that would indicate to you that he was sorry or remorseful that he shot Gloria?
A. Yes, sometimes he would.
Q. Explain that.
A. Well, like he was -- it was -- sometimes it was just matter-of-fact talk, you know, that he, "I shot her", and this is why and he would tell me, and then he showed me her picture, and he had tears in his eyes, and I'll tell him that I loved him and I cared about him and he said he didn't -- couldn't love or care about people the way I and his grandmother did.
Q. Do you remember if those are his words?
A. Yes.

Q. He couldn't love and care about people the way you and grandma did?
A. Uh-huh.
Q. Where did the picture come from?
A. His wallet.
Q. During the course of that evening, was he able to describe for you what happened to the gun?
A. Yes, sir. He -- he told me that Mickey put it in the trunk of the car and left with it.
Q. Is there any discussion with him as to why that occurred?
A. I understood that he -- that Mickey was afraid that Rick would shoot him because he was a witness.
Q. And is that something Rick told you?
A. Yes, sir.
Q. During the course of the evening, as he would go through the shooting of Gloria and the man that was with her, did the story ever change?
A. No, sir.
Q. What about the acting out part that you've shown the jury?
A. That never changed either.

Q. Did Rick finally retired for the night at some point?
A. Yes, sir. He went and laid in my son's bed and went to sleep.
Q. Did you call the police?
A. No, sir. He would have heard me.
Q. Why?
A. My house is real small, I only have one phone and that's in the living room, and he was in the bedroom between my daughter and the babies and me.
Q. Why did you care if he heard you?
A. He could have hurt us.
Q. What did you do for the balance of the evening?
A. I laid and watched for everybody to be okay.
Q. And did Rick get up the next day?
A. Yes, sir.
Q. Tell us what happened after he got up?
A. Well, I whispered to Kathy what he had told me he had done, and put my finger up like this.
THE COURT: Indicating index finger to the lips.

THE WITNESS: And he got cleaned up, I give him some of my son's clothes and he had me call the bus station, find out the ticket for Columbia, South Carolina, and how much it was, and he had me to -- he didn't have very much money, and so he had me to get my money and what money Kathy had so we'd have enough to get him a bus ticket.

BY MR. TALASNIK:

Q. Did he tell you where he wanted to go?

A. Yes, sir. Columbia, South Carolina.

Q. Did he tell you why that particular destination?

A. He said there was a fellow named Mike that he had some kind of business connection with here in Atlantic City, and that he owed him a favor and he would help him get out of the country.

Q. Did he say what he meant by get out of the country?

A. I just assumed go to some other country.

Q. And Rick told you that he wanted help to get out of the country?

A. Yeah, uh-huh.

Q. Did you talk to Rick about, well, what

happens if this friend doesn't help?
A. He told me he'd kill him.
Q. Did you get enough money together to buy Rick's ticket?
A. Yes, sir, yes, sir.
Q. And what did you do then?
A. Well, we got ready and that afternoon I took him to the bus and I went in and got the ticket and he got -- he went and got a pack of cigarettes and a can of beer and he drank that and he went in to use the bathroom, and when he came out the bus was pulling in and he got on the bus, and once I saw him, I went to the phone booth and called my daughter to let her know I was okay.
Q. Did he see the bus leave?
A. Yes, sir, I watched it till it got on the interstate.
Q. And that was the bus to South Carolina?
A. Well, yes, sir, it was to change in Richmond.
Q. And then ultimately to go where?
A. To Columbia, South Carolina.
Q. What did you do after Rick left?
A. I called my daughter. She told me she

called my friend Tom and Debra Cullen, people I worked with and friends of mine, and I was okay, and when I got home I came in the door, Tom asked me what I wanted to do, and I said I got to now if it's the truth, and so his wife Debra called a newspaper up here and they said it was the truth, and so I called the police.

Q. You told us that these friends that came over were people that you work with?

A. Yes, not at that time. I worked with them before.

Q. What kind of work do you do now, Mrs. Bryars?

A. I'm a sponsor for independent living program and home for dysfunctional children.

Q. Is that the kind of work you were doing back then?

A. Yes.

Q. Back when all this happened?

A. Yes.

Q. After the call was made to the newspaper and you were satisfied that the incident had, in fact, occurred, what did you then do?

A. I called the police and they let me call my brother and tell him.

Q. Before Rick left, did you talk to him about your own situation and your family?

A. Yeah, yeah, we talked of it some, not a lot.

Q. Did he say anything to you about contacting the police?

A. He told me not to.

Q. Was there anything else said by him in that regard?

A. He just told me not to. He told me that if they caught him and if he decided to let them bring him back here that, you know, he could get the death sentence. That really scared me, and he talked of maybe killing himself if he decided to do that, and we talked a little bit about he killed once, he'd kill again, and I took that as a threat to me if I turned him in.

Q. But you turned him in any way?

A. Yes, sir.

Q. Why?

A. He'd killed somebody.

Q. After you hooked up with the police, did they interview you?

A. Yes, sir, it wasn't till Saturday that they did.

Q. In what manner did they interview you?
A. I talked to them off and on all night long and then they took a statement from me.
Q. When you saw the bus leave with Rick on it, was that the last time that you had any contact with him?
A. No, sir.
Q. Did you come to know of his eventual arrest?
A. Yes, sir.
Q. During the summer that followed his arrest, did you have any contact with him?
A. Yes. My daughter would talk to him on the phone. He'd called a few times, and then finally just before I was to have this surgery in August, he called and I was there and I talked to him.
Q. Was -- you yourself on that occasion talked to him by phone?
A. Yes, sir.
Q. My daughter felt that he understood why I turned him in.
Q. Were you afraid to talk to him that day?
A. Yes, sir, I was.
Q. What did Rick Highlander say to you

during that phone call?
A. He told me that when he got to Charlotteville he knew I turned him in and he started to come back and blip me then.
Q. Blip you?
A. Yes, sir.
Q. What else did he say?
A. But he said that he could still have it done.
Q. Was there any other discussion?
A. Not a lot. I was too afraid. I just -- if there was, I can't remember. And then my son come home the next day and he called and Max wouldn't accept the charge and then Max called the police up here.
Q. All right. So that incident too was reported to the local police up here?
A. Yes, sir.

MR. TALASNIK: I have no further questions of the witness. Thank you, Your Honor.

THE COURT: Mr. Davis.

CROSS EXAMINATION
BY MR. DAVIS:
Q. Mrs. Bryars?

A. Yes.
Q. During the time that you were with Rick in April 27, 28, 1988?
A. Uh-huh.
Q. Did you see him with a weapon?
A. No, sir.
Q. Okay. Did he inflict any harm on you?
A. No, sir.
Q. Okay. In fact, is it not a fact that you had the discussion with him concerning harm to you or your daughter and the children?
A. Pardon me? I don't understand.
Q. Did you have a discussion with him concerning harm to you, your daughter and her children?
A. Yes, sir.
Q. And what did he indicate to you?
A. He kept saying that I was family and he wouldn't hurt us.
Q. Okay. And he never attempted to hurt you or the children?
A. No, sir.
Q. Or your daughter?
A. No, sir.
Q. Okay. And you never saw any weapons on

him?

A. No, sir.

Q. Now, you indicated on April 27th when you saw Rick, that was the first time you'd seen him in how many years?

A. To the best of my knowledge, eight years.

Q. Eight years?

A. Yes, sir.

Q. But during that eight year period, you've indicated that he used to call you with regularity or at least twice a month or so?

A. Yes, sir.

Q. You say when you saw him it wasn't the Rick that you used to know?

A. No, sir.

Q. Okay. And that he was very nervous?

A. Yes, sir.

Q. Did he appear to be upset?

A. Yes, sir.

Q. Distraught?

A. Yes, sir.

Q. Emotional?

A. Yes, sir.

Q. As you've indicated, he was a troubled man --

A. Yes, sir.
Q. -- When you saw him when he got off that bus. Then he entered your vehicle and you commenced discussing certain things with him?
A. Yes, sir.
Q. Okay. Did he ever deny that he had shot Gloria?
A. No, sir, he didn't.
Q. And you've indicated that on some occasions when you spoke to him about Gloria, he appeared to be sorry?
A. Once I clearly remember he did.
Q. Okay. And then sometimes it was a matter of fact?
A. Yes, sir.
Q. Is it true to say that during this conversation with you that day or two day period that he was up and down in his emotional state?
A. Yes, sir.
Q. Okay. Sometimes he was very distraught and other times he was matter of fact?
A. Yes, sir.
Q. Okay. And you further indicated that during the course of your conversation with Mr. Highlander that he indicated to you how this

killing happened?

A. Yes, sir.

Q. And you demonstrated to the jury?

A. Yes, sir.

Q. Now, isn't it a fact that during his versions or -- not versions, but continually telling you what happened, that he told you actually why he shot this lady?

A. He told me that she was going to be a witness against him.

Q. Okay. Well, he told you that she was going to be a witness?

A. Yes, sir.

Q. He told you that she wouldn't drop the charges?

A. Right.

Q. And he told you that he loved her?

A. I don't remember.

Q. All right. He told you how she had destroyed his life?

A. Yes, sir, he did.

Q. And he told you how he was concerned with her being with this man in the bar?

A. I don't remember that.

Q. Well, did he tell you what he intended to

do when he got out of that vehicle?
A. He was going to talk to her and when he saw the man he picked up the gun.
Q. Okay. So he said when he got out of that car, just before the killing, that his purpose of getting out of that vehicle was to talk to Gloria?
A. Uh-huh.
Q. And in fact, he told you that for that five or six week period preceding the killing that his reason for looking for Gloria was to speak to her?
A. Yes, sir, he wanted to talk to her.
Q. That's all he wanted to do, he wanted to talk to Gloria?
A. As best I can remember.
Q. As best you can remember.
A. Yes, sir.
Q. Okay. And that he attempted to talk to her in many fashions during that five or six week period?
A. Yes, sir.
Q. Contacted her lawyer?
A. Yes, sir.
Q. To no avail, he tried to call her, her

telephone number had been changed?
A. Yes, sir.
Q. Okay. He tried to get friends to speak to her?
A. Yes, sir.
Q. No answer?
A. Right.
Q. He tried to -- did he do anything else?
A. Not that I remember.
Q. Okay. And that when he would ride around town looking, his purpose was to talk to her?
A. The best of my knowledge.
Q. He just wanted to talk to her?
A. To the best of my knowledge.
Q. Okay. And your knowledge is based on what he told you?
A. Yes, sir.
Q. Okay. And on the night that the killing happened, when he jumped out of the car, it was his intent at that moment to talk to Gloria?
A. Yes, sir.
Q. Okay. And then when he saw the other man, that's when he did what?
A. He picked the gun from under the seat and he shot her.

Q. That's when he lost control?
A. I don't know.
Q. Now, when he was telling you over and over and over how this killing happened, isn't it a fact that he mentioned over and over and over about this man?
A. Yeah, he always told me about the man.
Q. Now, did you speak to him concerning his physical condition or whether he was under any intoxication at the time of this homicide?
A. Yes, sir, yes, sir.
Q. And what was that conversation?
A. He told me that he had been drinking and he had been doing cocaine.
Q. And did he tell you that he was high at the time that this --
A. Yes, sir, he did.
Q. What did he indicate to you?
A. He said he was high.
Q. And he indicated to you that if he would get caught that he would commit suicide possibly?
A. Yes, sir, he did.
Q. Or shoot himself?
A. Yes, sir, he did.

Q. Okay.
A. He didn't say shoot. He just said kill hisself.
Q. Kill himself. All right. Now, during the period of time that you had known Rick, had he been suicidal?
A. I've seen Rick in pretty bad shape before when he --
Q. Did he indicate to you that he was going to commit suicide?
A. Not to me.
Q. Now, you said on one occasion while he was speaking to you that he showed you a picture?
A. Yes, sir, he did.
Q. And that was a picture of whom?
A. It was a picture of Gloria. He said it was Gloria.
Q. He said it was Gloria?
A. Yes, sir.
Q. When he showed you that picture, what was his emotional state at that point?
A. That's when he had the tears in his eyes.
Q. Now, there came a time when Rick left the house?

A. Yes, sir.
Q. Okay. Now, isn't it a fact that when he left that you took him to the bus approximately three hours before the bus was supposed to arrive, and that you and Rick rode around the mountains for quite awhile?
A. No, sir.
Q. Talking?
A. Wait a minute. It wasn't three hours. It was awhile before because I went to Kroegers, but I can't remember it being three hours before.
Q. You went to --
A. I was just interested in getting him out of the house.
Q. And how long before did you --
A. I can't remember.
Q. Okay, it was quite awhile though, wasn't it?
A. Yes, sir, it was.
Q. During that period of time, whatever it was, you and he were in the car alone?
A. We talked, yes.
Q. Talking and driving and riding?
A. Yes, sir.

Q. In the mountains?
A. Yes, sir.
Q. And during that period of time, did he threaten you in any fashion?
A. No, sir. I was very scared.
Q. You may have been scared --
A. But he didn't threaten.
Q. But he didn't threaten you?
A. No, sir.
Q. You were scared because of the fact that he had indicated to you that he had killed somebody?
A. Yes, sir.
Q. Not what he said to you?
A. No, sir.
Q. Okay. Now, when Rick left, during that period of time that he left, did he still appear to be nervous and upset about this situation?
A. Yes, sir, he did.

MR. DAVIS: Okay. That's all I have, Your Honor.

THE COURT: Mr. Talasnik.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. During the course of your conversations

with Rick, did he indicate where the gun came from that he used to shoot Gloria?

MR. DAVIS: Judge, I'm going to object. This has been stated before.

THE COURT: I'm going to overrule, permit it, Mr. Davis.

THE WITNESS: Where the gun -- just that it come from under the seat.

BY MR. TALASNIK:

Q. Did Rick indicate to you that he knew it was there?

A. Yes, sir.

Q. That he's the one who pulled it out from under the seat?

MR. DAVIS: Objection --

THE COURT: Sustained --

MR. DAVIS: -- To the leading question.

BY MR. TALASNIK:

Q. Did he tell you how the gun got from under the seat to his hand?

A. He told me he reached under the seat and got the gun.

Q. And it's with -- was it with that that he then got out of the car to approach --

MR. DAVIS: Judge, I object again to the leading question.

THE COURT: Sustained.

BY MR. TALASNIK:

Q. In terms of sequence, did -- when did getting the gun from under the seat happen in relation to going up to see Gloria?

A. Okay. I'll tell you the best I can remember. When he saw Gloria and the man came out, he was going to talk to her. When he saw that there was a man with her, he got the gun out from under the seat and got out.

Q. Okay.

A. That's the best I can remember.

Q. Did he indicate to you that he only shot her once?

A. No, sir. I understood it to be twice.

MR. DAVIS: Judge, I'm going to object, this is outside of the cross examination.

THE COURT: I think it is, Mr. Talasnik.

MR. TALASNIK: Well, Your Honor--

THE COURT: In any event, she's already testified to it.

BY MR. TALASNIK:

Q. During the course of the conversation, to what fact did Mr. Highlander attribute the second shot?

A. That she --

MR. DAVIS: Judge, I object again for the same reason.

THE COURT: Sustained.

MR. TALASNIK: Your Honor, the defendant's attorney has elicited through cross examination the relationship, if you will, between seeing the man with Gloria and the shooting. I think that I should be permitted on redirect to show other fact or facts.

THE COURT: You may indeed, Mr. Talasnik, but the question you just asked she's answer three times already.

BY MR. TALASNIK:

Q. Did Rick attribute the second shot to seeing the other man?

MR. DAVIS: Judge, same objection.

THE COURT: No, I'll permit it.

THE WITNESS: I can't remember.

BY MR. TALASNIK:

Q. Okay. Do you recall what he attributed

the second shot to?
A. That the first shot didn't kill her.
Q. You have been asked by Mr. Davis about references Rick made to being high. Do you recall that?
A. Yes, sir.
Q. Did Rick ever indicate that he was so high he really doesn't remember what happened?
A. No, sir.
Q. Did Rick demonstrate any difficulty in remembering details of the shooting?
A. Not that I recall.
Q. Did he demonstrate any difficulty describing for you how he got from the scene of the shooting to how he got to West Virginia?
A. I don't understand.
Q. Was he able to explain to you how he got from the scene of the shooting to how he got to West Virginia?
A. Yes, sir.
Q. You have been asked whether Rick threatened you. Do you recall that?
A. Yes, sir.
Q. Did Rick say anything to you that you construed as a threat?

A. Yes, sir.
Q. And what was that?
A. Well, that he had killed once and he could kill again. That was the most specific one I remember.
Q. You were asked by Mr. Davis about whether you got Rick to the bus station some hours before it left?
A. Yeah, we did leave early.
Q. And you indicated that you were just interested in getting him out of the house?
A. Yes, sir.
Q. Why?
A. My grandchildren and my daughter was there, and he told me that he'd killed once and I didn't know whether he would hurt us or not, and I didn't want the babies to be hurt. He had assured me they wouldn't, but I didn't know that.

MR. TALASNIK: No further questions, thank you, Your Honor.

THE COURT: Mr. Davis.

RECROSS EXAMINATION

BY MR. DAVIS:

Q. Mrs. Bryars, when you make the statement

he said he killed once and he'd kill again?
A. Yes, sir.
Q. He never indicated that he would kill you?
A. He didn't say, I'll kill you, Aunt Judy, no, sir, he didn't.
Q. He didn't say he would kill anybody in your house, did he?
A. No, sir.
Q. Now, the prosecutor indicated to you that whether or not Mr. Highlander demonstrated any difficulty in remembering?
A. Yes, sir.
Q. Okay. The facts that Mr. Highlander indicated to you, you don't know if they were true or false, do you?
A. No, sir.
Q. And when you said he didn't demonstrate any difficulty in remembering, what would he have to indicate to you to demonstrate that he had difficulty in remembering?
A. Well, like if -- I don't know. I mean, I just didn't question that as far as telling me the same things. He told me the same things, you know, when he repeated. I can't remember

their -- whether it varied.
Q. Did it vary?
A. No, sir, not that I can remember.
Q. Did you question him as to any of the facts?
A. I listened to Rick that night.
Q. You didn't question him at all?
A. Not very much.
MR. DAVIS: That's all.
THE COURT: Mr. Talasnik.
REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Mrs. Bryars, you indicated that Rick never said I will kill you?
A. No, sir.
Q. He did, however, say that he could have you blipped?
A. Yes, sir.
Q. What does that mean to you?
A. Killed.
MR. TALASNIK: Thank you, no further questions.
RECROSS EXAMINATION
BY MR. DAVIS:
Q. Mrs. Bryars, that statement --

A. Pardon?
Q. That statement that the prosecutor just indicated to you, that wasn't made to you when Mr. Highlander was in your presence on April 27th, 28th?
A. Not in my presence.
Q. That statement that you've indicated which you attributed after he was arrested?
A. Yes, sir.
Q. Okay. But on the date of 27th and 28th, he didn't make any threats to you?
A. No, sir.

MR. DAVIS: Okay. That's all.

THE COURT: Mr. Talasnik?

MR. TALASNIK: Nothing further, thank you.

THE COURT: You may step down, Ms. Bryars. Thank you very much for coming.

MR. DAVIS: Judge, may I approach the bench?

THE COURT: You may.

(The following is heard at sidebar).

MR. DAVIS: Judge, the defendant's indicated he has to use the rest room.

THE COURT: Oh, okay.

(Whereupon the following is heard in open court).

THE COURT: Ladies and gentlemen, we're going to take a brief recess here, only be a couple of minutes, so we'll be right back. Again, no discussions about the case during the recess. See you in a minute.

(Whereupon Court takes a brief recess at 11:25).

(The following is heard before the jury at 11:50).

THE COURT: All right, would you be good enough to swear in the witness, please.

J A M E S D A V I S, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Davis, where do you work?

A. I'm employed as special agent with the Federal Bureau of Investigation assigned to the Columbia, South Carolina Field Division.

Q. How long have you been a special agent with the F.B.I.?

A. Approximately sixteen years.
Q. How much of that time has been spent in the Columbia, South Carolina area?
A. I started my career there. I spent three years there and transferred around, till about a year ago, I returned to Columbia.
Q. Were you working in Columbia, South Carolina during the month of May 1988?
A. Yes, sir, I was.
Q. In that capacity, did you become aware of the existence of a warrant?
A. Yes, I did.
Q. For the arrest of one Richard Highlander?
A. Yes, sir, I did.
Q. And what was the charge on the warrant?
A. The charge was murder.
Q. Did you have information that Mr. Highlander might be in the Columbia, South Carolina area?
A. Yes, sir, I did.
Q. And was an investigation conducted in an effort to locate Mr. Highlander?
A. Yes, sir.
Q. Can you summarize for us what investigative steps you took in an effort to

locate Mr. Highlander?
A. Yes, sir. We received information that Mr. Highlander had possibly attempted to contact a former associate in Columbia, South Carolina. We went to that business address, and after several days, finally located the individual who was acquainted with Mr. Highlander. Through an interview with him, we had determined that Mr. Highlander had been in Columbia, South Carolina the previous week, and through subsequent investigation, we located Mr. Highlander through his employer.
Q. Do you remember the name of the fellow, the local contact that you thought Mr. Highlander might be hooking up with?
A. I believe it was Bryant.
Q. Okay. As a result of that interview and the other information that you learned, were you able to locate Mr. Highlander?
A. Yes, sir. We located Mr. Highlander on May 12th, 1988.
Q. What time did you locate him?
A. At approximately 5:00 p.m.
Q. And do you recall where it was that you located him?

A. It was at the residence of 1505 Hollywood Street in Columbia.
Q. Were there other agents with you at the time that he was located?
A. Yes, sir, I had approximately four additional agents with me.
Q. Would you describe the arrest of Richard Highlander?
A. Yes, sir. Through a surveillance of the residence, we were able to determine that Mr. Highlander was lying down in the back yard. We approached the back yard and Mr. Highlander. We announced our identities as agents of the F.B.I. and that he was being arrested based on the unlawful flight to avoid prosecution, federal warrant for the underlying offense of murder. Mr. Highlander had asked how we had found him, and at that point, I advised him of his Miranda rights. He was placed in an F.B.I. vehicle and transported to our office in Columbia.
Q. Was an effort made to interview him right then and there at the point of arrest?
A. No, sir.
Q. Why not?
A. We wanted to take him back to our office

where we could conduct a more formal interview in a better setting.

Q. How far was the office from where he was arrested?

A. Approximately five minutes.

Q. Did you respond at the scene to his question, how did you guys find me?

A. I responded by advising him of his Miranda rights.

Q. Tell us what happened when you got Mr. Highlander to the F.B.I. building in Columbia?

A. We escorted him to one of our interview rooms, we seated him, removed one of the handcuffs. At that point, I presented him with a form entitled Interrogation Advice Of Rights, which advises of the Miranda rights. I put the rights in front of him so that he could read as I was reading them to him, and then I asked Mr. Highlander to read the bottom portion of the form, which is the waiver of rights, and these were done in a loud voice. Mr. Highlander advised that he understood his rights as he had read them, and as we had read them, and he signed his name to this form.

Q. Agent Davis, I'm going to show you a

document that has been earlier marked as S-3 for identification. I'd like you to look at it, tell me if you recognize what it is?

A. Yes, sir. This is the form that I had advised of Interrogation Advice Of Rights Form which contains Miranda rights and waiver.

Q. Are there indications on there of signatures?

A. Yes, sir, there is a line for Mr. Highlander to sign. His signature appears on that line. There are two lines for witnesses, my signature appears on the top line and Special Agent Michael Clemens appears on the next line.

Q. Does that appear to be the original of the document that was used to advise Mr. Highlander of his rights?

A. It is.

THE COURT: Ladies and gentlemen, excuse the interruption for just a moment. The witness has referred to what are called Miranda rights. You should know, simply for purposes of this trial, that the phrase refers to the name of a certain case that was decided some years ago. Essentially, when someone is in police custody, before he can be asked any questions,

he has to be advised of certain legal rights that he has, and that's what the phrase Miranda rights refers to. You may proceed.

MR. TALASNIK: Thank you, Your Honor.

BY MR. TALASNIK:

Q. Agent Davis, was anyone else present for the interview of Mr. Highlander?

A. Yes, sir. Agent Clemens and Special Agent David Carol.

Q. Is the fellow that you interviewed in the F.B.I. office in Columbia, South Carolina in the courtroom today?

A. Yes, sir, he is.

Q. Could you identify him, please?

A. Mr. Highlander is seated in the white shirt without the coat at this table to my left.

THE COURT: The reference is made to the defendant.

BY MR. TALASNIK:

Q. Did you ask Mr. Highlander if he would agree to talk to you about the case?

A. Yes, sir, I did.

Q. And how did he respond?

A. He responded by saying, I'll talk to you.

Q. What was the first question that you asked him?
A. The first question I asked Mr. Highlander was, did he kill Gloria Simonelli.
Q. And how did he reply to that?
A. He said, I don't want to answer that right now.
Q. What was the next thing that was said by anyone after he said I don't want to talk about that right now?
A. Mr. Highlander continued to provide us information in a narrative fashion.
Q. Did you permit him to sort of pick the sequence of the narrative that he was going to give to you?
A. Yes, sir.
Q. You permitted him to decide where to start?
A. Yes, sir.
Q. Where did he start in giving you this narrative in the F.B.I. office?
A. He started by furnishing us some background regarding hisself, and by providing some background information in how he met Gloria Simonelli.

Q. Did he describe for you the -- or what did he describe for you in terms of the background information about himself, his status at the time that he met Gloria?
A. He described that he had been involved with some difficulties which he was on probation through some burglary activity.
Q. Did he then begin to describe for you how he met the victim?
A. Yes, sir.
Q. And what did he tell you?
A. He advised that he had met Ms. Simonelli at a gift shop and had asked her out, she agreed, and from that point, the relationship developed into a romantic relationship, and they subsequently took some trips together and developed to the point further where they resided together. Mr. Highlander advised that during approximately a four and a half month period of time he had spent around fifteen thousand dollars on Miss Simonelli by buying her a new automobile, a mink coat, paying some of her bills, and at one point he advised that he had furnished her as much as fourteen hundred dollars in a single day.

Q. Whose idea was it to begin talking about all of this money that he claimed that he had spent on Gloria?
A. Mr. Highlander's.
Q. And did you just permit him to go on and on like that?
A. Yes, sir.
Q. Why?
A. He was telling us in his own fashion what happened, and we were willing to listen.
Q. Did he have some negative things to say about Gloria Simonelli?
A. Yes, sir.
Q. And what were they?
A. He advised that Miss Simonelli, in one of her jobs, was skimming money off the top, I believe was his terminology, and that she had also been involved in selling some drugs.
Q. And these were things that he volunteered about the girl he had spent all this money on?
A. Yes, sir.
Q. Did he then progress to the point of telling you about an assault incident that occurred as between he and Gloria Simonelli?
A. Yes, sir, he did.

Q. Was he the one who, after talking about the money that he spent and saying negative things about Gloria, is he the one who got to the point of talking about this assault?
A. Yes.
Q. What did he tell you about that assault?
A. He advised that one evening he and Miss Simonelli had argued, and upon getting in the bed, Mis Simonelli had attempted to kick him, and this had irritated him to the point that he slapped her, causing a purple mark to appear on her face. Miss Simonelli subsequently obtained a restraining order against Mr. Highlander and Mr. Highlander advised that for the next two days he had spent approximately five thousand dollars and checked on Miss Simonelli's residence on numerous occasions.
Q. Did Mr. Highlander indicate to you himself knowledge and awareness of this restraining order?
A. Yes, sir.
Q. And indicating that Gloria was the one who took it out against him?
A. Yes.
Q. Now, he also, at this point, says that he

would check on her residence to see if she was there?

A. Yes, sir.

Q. How did he describe that?

A. Just by saying during the two day period, that during the spending of the five thousand dollars, in fact, he went by her residence to check if she was there.

Q. Okay. What was the next thing that happened after he tells you now about the assault, about knowledge of the restraining order and checking her residence to see if she was there?

A. At this point, Mr. Highlander stood up and made a statement, I knew it when I did it, and if I had to do it over again, I would have unloaded the pistol on her, and the guy, too.

Q. How had Mr. Highlander's demeanor been up -- let's start at the beginning. How had his demeanor been when he was telling you about being on probation for his other problems?

A. Ordinary, I would describe it as. We were conversing, there was nothing unusual about the way he was describing.

Q. As he then progressed to tell you about

meeting Gloria and beginning to date her, how was his demeanor?

A. It was about the same, maybe with some increased anger, anxiety, maybe.

Q. As he proceeded to tell you about all the money that he spent on her and the various negative things about her, how was his demeanor?

A. About the same.

Q. What about when he got to the point of describing the one slap and the restraining order and checking on her house, how did he seem?

A. He seemed to be speaking a little bit more rapidly, a little bit more anger was coming out.

Q. Now, describe this incident of him standing up. I need to understand more what you mean.

A. Yeah. It was just a sudden outburst, that we were to the point that my initial question was at at the onset of the interview, did you kill her, and then he had built up the background to the point, it was like a crescendo, reaching the point he was going to tell me, and that's when he stood up and made

that statement.
Q. Did you make any effort to formally memorialize those words?
A. Yes, sir.
Q. In what way?
A. We were taking notes during the interview and I wrote them down.
Q. Can you tell us, as best you can now recall, exactly, word for word, what Rick Highlander said when he bolted up?
A. I knew it when I did it, if I had to do it over again, I would have -- I would have emptied the pistol on her, and the guy, too.
Q. Okay.
Q. After that outburst, what did you do with Mr. Highlander?
A. I asked him to sit down, which he did. Mr. Highlander appeared to be somewhat shaken. There was some teary eyes and I think we just sat there for a moment while he composed himself.
Q. Was there then some discussion between you and Mr. Highlander about some charges that had been brought against him by Gloria?
A. Yes, sir. He -- Mr. Highlander related

that the simple assault charges had been increased to aggravated assault, and criminal assault and terroristic threats were added, and I believe he said that he was eventually indicted on the terroristic threats.

Q. What was his demeanor like as he was telling you about these charges that started one way and ended up getting indicted against him?

A. His demeanor had resumed to like it was at the original onset of the interview.

Q. After he described for you the process of learning of the indictment, was there any discussion about any efforts that he made to somehow deal with the charges, or to deal with Gloria?

A. Yes, sir. He had contacted a couple of acquaintances to attempt to make contact with Miss Simonelli. He had written a letter telling her how much he loved her, and he also had contacted an attorney to effect a contact through Miss Simonelli's parents, I believe it was, which I think he was referred to the prosecutor.

Q. Was he able to tell you the name of the attorney that he retained for that purpose?

A. Yes, sir, he did.
Q. Do you remember what it was?
A. Again -- it was a rather long last name. I don't recall it at this instance.
Q. And begins with Ben?
A. I believe so.
Q. Did he indicate to you whether any of these measures were successful?
A. They were not.
Q. Did he tell you how he felt about that?
A. Yes, sir.
Q. And how?
A. He didn't feel real good about it.
Q. Did he then, or at that point, what was the next subject matter that was raised by Mr. Highlander?
A. He had described obtaining a weapon, and he said a .358 magnum, which he had cleaned, and purchase of the hollow point ammunition for it. He had leased, I believe it was a 1988 late model white colored vehicle. He didn't recall the make, the model of the vehicle, and he had these two items available to him.
Q. Did his reference to the gun that he had cleaned and his reference to the car that he had

leased come from Mr. Highlander himself?

A. Yes, sir.

Q. Did they come after he told you that he wasn't happy about his inability to reach Gloria or to have someone reach Gloria?

A. Yes, sir.

Q. Was there then some discussion about the incident or the day of the shooting?

A. Yes.

Q. What did Mr. Highlander tell you about the day Gloria died?

A. Mr. Highlander had been driving with another individual. He had went by the Greenhouse Bar in Margate City and Mr. Highlander had spotted Miss Simonelli's vehicle and he recognized it as the one that he had bought for her. He further described the car as having a red ribbon on the mirror which Miss Simonelli's mother had made for her to put there. Mr. Highlander made a statement that he felt that Miss Simonelli was in the bar to pick up a guy, and that he was going to use his car to take her home to his bed and go to bed with him. He told the driver of the vehicle he wanted to go get a ski mask and kill her. The

driver told him to wait until dark.

Q. Did Rick tell you the approximate time of this sighting of Gloria's car at the Greenhouse?

A. Approximately 5:30.

Q. But he determine to wait until dark?

A. Yes, sir.

Q. Go on with his description of the evening's events.

A. He and the other individual went to another bar where Mr. Highlander said that he had a couple of drinks, vodka, I believe, and some cocaine, and then went back to the Greenhouse Bar.

Q. Did he say why he returned to the Greenhouse Bar?

A. Yes, sir, he said he was going back to kill Miss Simonelli.

Q. What was the next thing that he said after indicating that it was his purpose in going back to the bar to kill Miss Simonelli?

A. He said he was going back to kill her and that was premeditated, and he went back to the area of the Greenhouse Bar, at which point he was going to go in and kill her, and at that point, he saw Miss Simonelli exiting the

Greenhouse Bar with a guy behind her. Mr. Highlander advised that he reached under the seat, obtained the gun, and he exited the vehicle and he walked toward Miss Simonelli, going between cars in her direction, until he got to the point approximately ten feet from her. He heard Miss Simonelli say, oh, no. He had raised the gun and cocked it and shot her. She fell to the ground and Mr. Highlander said he heard her say, I don't believe this is happening to me, at which point he shot her again. Mr. Highlander advised that he was aware of the guy in the area and he had taken a bead on him and fired a shot at him and returned to the vehicle and left the area.

Q. Agent Davis, you indicated that after Rick told you that he returned to the Greenhouse that night to kill Miss Simonelli, that he told you that it was, to use your word, premeditated?

A. Yes, sir.

Q. Whose word is that, yours or Mr. Highlander's.

Q. Mr. Highlander's.

Q. Did you have occasion to try to take down, word for word, exactly what he said at

that point?
A. Yes, sir, I did.
Q. And as best you can now recall, what exactly did Mr. Highlander say about that?
A. There was a statement prior to him making the statement regarding premeditated, and it kind of escapes my memory at this point.
Q. Agent Davis, did you prepare handwritten notes in this matter?
A. Yes, sir.
Q. And do you have them with you?
A. Yes, sir, I do.
Q. Were they prepared at the same time that you're listening to Mr. Highlander talk?
A. Yes.
Q. And do you have them in your possession today?
A. Yes, sir.
Q. Could I see them, please?
(Witness produces notes).
Q. Agent Davis, would looking at your handwritten notes refresh your present recollection about what exactly Mr. Highlander said at this point?
A. Yes, sir, as far as quoting what he said.

Q. I want to show you an item, therefore, that has already been marked as D-1 for identification, I'd like you to look through it and tell me if you find the area that we've been describing?

(Witness complies).

A. Yes, sir.

Q. Does reading what you have written down refresh your present recollection about what Mr. Highlander said?

A. Yes, sir.

Q. And is it, in fact, in quotes?

A. Yes.

Q. Will you tell the jury what it is?

A. "I knew I was going to kill that mother fucker. It was premeditated."

Q. Was there any conversation or any statement by Mr. Highlander indicating a plan to till Gloria, or for how long a time he had so planned?

A. Yes. He said he had purchased the weapon a week prior to that and that he was going to kill her. He had already leased the vehicle, loaded the gun and cleaned the weapon.

Q. Was there any discussion by Mr.

Highlander about what he was wearing?
A. Yes. He -- he advised that he was wearing a running suit and some Rockport shoes.
Q. Did you ask him for those details or is that something he volunteered for you?
A. He volunteered that.
Q. As far as to the exact description, as far as tennis shoes, he may have said. I asked him what kind of tennis shoes.
Q. Okay. In your description for us of Richard telling you about the death of Gloria, references are made to specific statements that he remembers Gloria making, do you recall that?
A. Yes, yes.
Q. Is that also information that you quote?
A. Yes, sir.
Q. And do you also find that in your notes?
A. Yes, sir.
Q. Was there a discussion by Mr. Highlander as to what, if anything, was done to the man who walked out with Gloria?
A. He had -- Mr. Highlander related that after taking a bead on him and shooting at him, he inquired as to the driver of the vehicle when he left if he had hit him, and the driver

responded to Mr. Highlander that he had jumped, and Mr. Highlander told us that he has since learned the identity of that individual.

Q. Okay. Was there then a discussion as to how Mr. Highlander was able to get away from the scene of the shooting?

A. The discussion was that he went back to the vehicle with the other individual, that they left the area in that car and went to a bar in Longport, New York. During the trip, at -- at some point, the weapon was placed under the spare tirewell in the trunk of that vehicle.

Q. Was there any discussion by Rick as to why the gun had been moved and who moved it?

A. Mr. Highlander said that the driver placed the weapon there, and that the driver was afraid that Mr. Highlander may use it on him. He also described the driver, telling him that he had walked up to Miss Simonelli and shot her like it was nothing.

Q. Was there more discussion with Mr. Highlander about his state of mind or how he felt about Gloria or about the shooting?

A. Yes.

Q. Will you tell us about that?

A. He said, without the direct quotes, that he had meant to do it, that is something he felt he had to do.
Q. At this point in the interview, did you continue to take notes?
A. Yes, sir.
Q. And would your notes refresh your present recollection about any direct quotes made by Mr. Highlander?
A. Yes, sir.
Q. Would you open your notes to that point that we've been discussing where there is some indication by Mr. Highlander about his state of mind, how he felt about the shooting?
(Witness complies)
A. I believe those notes are going to be contained in the other set of notes.
Q. What other set of notes?
A. Mr. Clemens'.
Q. I see. Okay. As best you can recall, what did Mr. Highlander say at that point as to how he felt regarding the shooting of Gloria?
A. He felt it was something that he had to do, that he meant to do it and that he was not sorry that he did it.

Q. Was there any discussion with Mr. Highlander about how he had been able to avoid detection during the weeks that followed the shooting?
A. Yes. He had obtained a lodging at the Salvation Army in Columbia, South Carolina, and he used a false name of Mike Reed to register there, and he had gained employment through another false identification using the name Rick Stewart.
Q. During the course of this interview or any part of it, did Mr. Highlander ever indicate to you that he was so far gone on drugs or alcohol that he does not remember the killing?
A. No.
Q. During the course of the interview or any part of it, did Mr. Highlander ever indicate that the killing was as a sudden, unplanned reaction to seeing Gloria and the other man?
A. No.
Q. Was there any discussion by him as to steps that he took leading up to the killing?
A. Yes, there was.
Q. What sorts of things?
A. He had purchased the gun, he had loaded

the gun, hollow pointed ammunition, he had leased the car, he had checked Miss Simonelli's residence. At one point he wanted to obtain a ski mask. His statements made during the interview indicated that he had meant to do it, that it was premeditated.

Q. Okay. After the oral interview process was completed, what happened next?

A. Mr. Highlander was asked if he would provide a signed statement.

Q. And how did he reply?

A. Yes.

Q. Was he given a piece of paper to write it out?

A. No, sir. I asked him if he wanted to write it or if he would like one of the agents to write it that was in on the interview, and he said we could write it, and Agent Clemens took my notes and his notes and wrote the signed statement. Mr. Highlander was presented with the statement to read for its accuracy and truthfulness, and he made at least one correction that I recall, and he also requested that a paragraph be added to the statement. After reading the statement in detail and

initialing each page at the top and bottom, Mr. Highlander agreed with the content and signed his name.

Q. Agent, I'm going to show you a series of documents that have been stapled together and are marked S-5 for identification. I'd like you to look at them and tell me if you recognize what they are?

A. Yes, sir. This is the -- S-5 is the three page statement that we took of Mr. Highlander.

Q. Do you recognize any signatures on that document that help you conclude that that is the exact document shown to and signed by Mr. Highlander?

A. Yes, sir. The third page contains Mr. Highlander's signature and the date. It also contained Agent Clemens, Agent Carol and my signature.

Q. I believe you indicated to us that initials are placed on the pages as well?

A. Yes, sir.

Q. I'd like you to examine the document, tell me if you find those initials?

A. Yes, sir, I do. The initials of the --

Mr. Highlander and the three agents appear at the top and bottom of each page, on the first page, same location on the second page, and on the second page there are two corrections, cross offs, which are also initialed by the same four people, and the third page is initialed at the top and the signatures appear after the statement, and the initials appear at a line drawn diagonally after the statement.

Q. What's the purpose of that diagonal line business?

A. Just shows that's the end and nothing was added to it.

Q. Okay. What was physically done with this statement?

THE COURT: Mr. Talasnik, we're going to interrupt at that point.

MR. TALASNIK: Okay.

THE COURT: Recess here for lunch. Ladies and gentlemen, we'll continue with the direct examination of Agent Davis after lunch. In the meantime, of course, please refrain from any discussions about the case during your luncheon recess. See you back at 1:30.

(Whereupon jury is excused for lunch at 12:30).

THE COURT: Mr. Davis, please be certain you don't discuss the substance of your testimony with anyone during the recess.

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

(The following is heard before the jury at 1:40).

THE COURT: All right, Mr. Talasnik. You may proceed. I think you were inquiring about S-5.

MR. TALASNIK: Yes, Your Honor

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Let me again show you the document that has been marked as S-5, and would you explain the procedure that was followed after it was written?

A. Yes, sir. After it was written, we took it into the interview room to Mr. Highlander and he had an opportunity to read what was written. He read it, and he advised that he would like to change two things on page two, one being the

description of the sneakers. We had written high top and he said they weren't high tops, so that was scratched out, and he wanted to add the last paragraph to the statement.

Q. Was he permitted to do that?

A. Yes.

Q. Why?

A. It's his statement.

Q. After the statement was completed, what was done with Mr. Highlander?

A. After the statement was completed, we took him to the processing room and we photographed and fingerprinted him and then we took him to the Richland County Jail.

Q. Do you know about what time of night it was by that time?

A. We arrived at approximately 9:00 p.m.

Q. Did you see him at all before the next morning?

A. No.

Q. At some point, were the local police officers that were up here in Atlantic County notified that Mr. Highlander had been arrested?

A. Yes, sir.

Q. And when was the first time you had any

contact with them after that notice was made?
A. I met with Investigator Al Juliano and another investigator the next morning and briefly told them what had transpired.
Q. Okay. Did you see Mr. Highlander at all that day? This would now be Friday, the 13th of May.
A. Yes, sir.
Q. And in what capacity did you see him?
A. We went by the Richland County Jail to pick him up and transport him to the Federal Courthouse for his extradition hearing.
Q. At some point during the day did you then surrender custody of Mr. Highlander to the local officers who had come down?
A. That was arranged through the U.S. Marshall Service, but yes, he was turned over to the local officers.

MR. TALASNIK: Thank you, I have no further questions of the witness.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. DAVIS:

Q. Agent Davis, you indicated you initially saw Mr. Highlander on May 12th of 1988?

A. That's correct, yes, sir.
Q. And he was located where?
A. At 1505 Hollywood Street in Columbia, South Carolina.
Q. And where was he located on those premises?
A. He was located in the backyard, he was lying on his back sort of looking up at the sky.
Q. Okay. Now, when you and your fellow agents approached him, did he resist in any fashion?
A. No, he did not.
Q. Okay. Did you have a problem actually placing him under physical arrest at that time?
A. No, sir.
Q. Okay. Now, when you were at the scene, did you notice whether or not the defendant had been drinking?
A. I recall seeing a beer can or a beer bottle in the immediate vicinity of Mr. Highlander.
Q. And when we're speaking in terms of immediate vicinity, I assume you're speaking of the backyard?
A. Yes, sir.

Q. Now, did you look into the -- did you look into the rest of the house to discern whether or not he had been drinking?

A. I did not go into the house.

Q. Okay. And at the scene of the arrest, did you question the defendant in any fashion?

A. No, sir.

Q. Okay. Was it a fact that you asked him about a weapon, namely, a gun there?

A. Was mention of a weapon as to -- if he had one.

Q. Okay.

A. That was for our protection.

Q. Okay. And as a result of mentioning that, did you make a search with regard to a weapon?

A. He was frisk-searched on his person.

Q. Was the area searched?

A. No, it was not.

Q. On his person did you find any weapons?

A. No, sir.

Q. Okay. Now, from there you took him down to where?

A. To our office located in Columbia in the federal building.

Q. And you took him into the office for what purpose?
A. To interview him and fingerprint and photograph him.
Q. And when you say interview, what do you mean by interview?
A. To give him an opportunity to tell us what transpired in the crime with which he is charged.
Q. Now, when you took him to your station -- excuse me, to your office, did you have any personal facts surrounding this incident?
A. I had been in receipt of a communication from our Atlantic City resident agency, which is out of our Newark Headquarters office, providing us with a copy of the unlawful flight to avoid prosecution warrant and a brief summary of what had happened, the facts of the matter.
Q. Now, you further indicated you gave the defendant his Miranda warnings?
A. Yes, sir.
Q. Now, did he have anyone in the room with him?
A. Yes.
Q. Who did he have?

A. Agent Carol and Agent Clemens.
Q. Carol and Clemens were with you. Did he have anyone there on his behalf?
A. With him?
Q. Yes.
A. No, sir.
Q. Okay. And as a result of him signing that statement, or the Miranda warnings, you then commenced to take a statement from him?
A. As it transpired, after the form was presented to him and we both read it, and he signed it, I'd asked him if he would be willing to talk about the -- the Gloria Simonelli killing, and he replied that I'll talk to you. After he signed it, he commenced to tell us what had happened after I initially asked him the question.
Q. Now Agent Davis, how did you conduct this interview?
A. My first question, after he said, I'll talk to you, and he executed the -- the form, was, did you kill Gloria Simonelli, and he replied that, I don't want to answer that right now. He continued talking and relaying the background of his own personal problems.

Q. Okay.
A. And the relationship with Miss Simonelli, and gave us a narrative, a flowing narrative as to what actually happened.
Q. Now, you indicated, Agent, that after you asked the first question, you didn't ask any more questions?
A. No. As we went through the narrative that he provided, I would ask questions periodically.
Q. Okay. And do you recall specifically what questions you asked?
A. Not specifically. They would relate to perhaps something in this area that I'm not familiar with, or perhaps as he would describe his clothing, tennis shoes, I may have asked what brand. The vehicle that he leased, I asked him what model or make it was. There were other situations, such as when he said he went to the Greenhouse Bar at 5:30, I asked him the date, and he didn't recall that. Situations like that I would have interrupted and asked questions, yes, sir.
Q. Now, you've indicated he started off telling you his relationship with Miss

Simonelli?
A. Yes, sir, after he provided that background on his criminal problems.
Q. Okay. And is it a true statement to say that he thought he had treated Gloria Simonelli very well?
A. He remarked during the interview that he felt that he had treated her and her parents well.
Q. And he had done some painting for the parents at their condominium?
A. That's correct.
Q. That he had purchased several expensive gifts on behalf of Miss Simonelli?
A. Yes, sir.
Q. And he further indicated that he and Gloria Simonelli participated together in the use of coke and alcohol?
A. He said that they used cocaine, yes, sir, and alcohol.
Q. Now, you further indicated that as he was giving you these initial facts, that he appeared to build up to a crescendo, is that right?
A. At one point, yes, sir.
Q. And what do you mean by that statement?

A. It was -- he was wanting to tell us that he was in control of how he was telling us. His demeanor progressed from one of normal conversation to a somewhat more rapid relaying of what transpired, and that's what just got to the point where he finally stood up.
Q. Now, this crescendo, when he reached that point, that is the point where he indicated to you that, in fact, he had killed Gloria Simonelli, is that a fact?
A. Yes, sir.
Q. And it's at that point that he lost -- or he became, as you indicated, shaken, teary eyed and uncomposed?
A. For a brief period of time, yes, sir.
Q. Okay. And you further indicated that it was at that point that you had to calm him down and sit him down in order to allow him to continue?
A. Well, his reaction when he made that statement was to stand up, and it wasn't something that he stood there for a long time. He sat right back down, and realizing that my feeling was that he was telling us in his own time and the way he wanted to tell us, when he

made the statement and he became teary eyed, realizing it was a difficult thing to do in making the statement, he paused, and the pause was, I felt, to compose himself.

Q. Okay. Now, at any time up to this point did he ever deny to you what he had done to Gloria Simonelli?

A. Up to that point, his whole narrative was to tell us the background in his relationship with her. At that point is when he said that he killed her.

Q. Okay. Did he ever deny that he had killed Gloria?

A. No.

Q. Okay. Now, you further indicated that somewhere along the line he indicated to you that he was riding around looking for Gloria?

A. Yes, sir.

Q. Did he tell you why he was looking for her? And let me back up. Prior to the date of the homicide, did he indicate to you that he had been riding around looking for Gloria?

A. At one point he said that he had driven by her house on numerous occasions.

Q. Okay.

A. Looking for her.
Q. And did he tell you why he had driven by her house on numerous occasions?
A. He didn't specifically tell me why.
Q. Did you ask him why?
A. As the narrative was going and as he was relating it, it was clear to me that he was looking for her to kill her.
Q. That became -- as you said, that was the conclusion you reached, but when he was giving you that statement, did he tell you he was riding by to look for her to kill her?
A. As it was, he had obtained the gun, he had obtained the vehicle and it was my feeling that's why was he was looking for her.
Q. Officer, forget the day of the incident.
A. Okay.
Q. Forget the day of the incident. Prior to the date of the incident, that when he indicated to you that he was riding by Gloria Simonelli's home, forget your conclusion, did he tell you why he drove by her house?
A. No. He had just said he was spending five thousand dollars and he was driving by her house on numerous occasions.

Q. On numerous occasions?
A. That's right.
Q. Did you ask him why he was driving by her house?
A. No.
Q. At that time, did you ask him whether or not he was armed driving by her house?
A. No, I didn't.
Q. Did he tell you that he was armed driving by her house?
A. No, he did not.
Q. In fact, on the date that he saw her at the Greenhouse, he told you that was by coincidence, didn't he?
A. He was, as I recall, driving around looking for her, and by coicidence, he ran up on the car at the Greenhouse.
Q. So the question was, on the date that he saw her, on the date of the homicide, that was by coincidence?
A. I don't believe that can be answered with a yes or no answer. I think -- well, my feeling was he was looking for her, maybe not looking for her at the Greenhouse Restaurant. Coincidentally, he observed the car at the

Greenhouse.

Q. Well, Officer, in your report you indicated that it was by coincidence that he saw Gloria Simonelli's car at the Greenhouse around 4:30 or 5:00 o'clock that afternoon?

A. With that background in mind, yes, sir.

Q. Background that you've given us is one thing. The only thing I'm asking you is what he told you.

A. In my report, I put by, coincidence, he observed the vehicle at the Greenhouse.

Q. Did he tell you by coincidence or is it your conclusion that he's -- that it's by coincidence?

A. I recall that he told me that.

Q. Okay. So what you have in your report are not your conclusions, is that what you're telling us?

A. That's correct.

Q. But what he told you?

A. That's what he told me.

Q. Now, digressing a little bit to the night he had the argument with Miss Simonelli, did he tell you why that happened, what surrounded that argument?

A. He related that Miss Simonelli had been drinking and using cocaine. He made one statement during that particular time that she was always asking for money. He did not specifically tell me why they were arguing.
Q. Well, did she say what he did to her that night, physically?
A. He told me what he did to her.
Q. No, what she did to him.
A. He told me that she attempted to kick him to keep him away from her.
Q. And he did what?
A. He slapped her on the face.
Q. In fact, he says she kicked him to keep him from getting in the bed, didn't she?
A. That's right.
Q. She didn't say to get to her, but to keep him from getting in the bed?
A. Well, they were in the bed.
Q. And as a result of her kicking him, he smacked her?
A. Yes, sir.
Q. Okay. Did he indicate to you at that time whether or not there is any injuries to Gloria Simonelli?

Part II
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A-59-89T4

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

- - - - - - - - - - -

STATE OF NEW JERSEY,

COMPLIANANT,

VS.

RICHARD LEE HIGHLANDER,

DEFENDANT.

TRANSCRIPT OF
TRIAL

- - - - - - - - - - -

AT: ATLANTIC COUNTY COURTHOUSE
MAYS LANDING, NEW JERSEY
ON: MONDAY, JUNE 19, 1989

B E F O R E:

THE HONORABLE STEVEN P. PERSKIE, JSC

ORDERED BY:

JAMES JUKES, DEPUTY PUBLIC DEFENDER

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

MURRAY TALASNIK, ESQUIRE
ASSISTANT PROSECUTOR, ATLANTIC COUNTY
ATTORNEY FOR STATE OF NEW JERSEY

NATHAN DAVIS, ESQUIRE
AND MICHAEL PRESTON, ESQUIRE
DEPUTY PUBLIC DEFENDERS
ATTORNEYS FOR DEFENDANT HIGHLANDER

KATHY E. DURAND, CSR, CM
OFFICIAL COURT REPORTER
ATLANTIC COUNTY
1201 BACHARACH BLVD, RM 241E
ATLANTIC CITY, NJ 08401

FILED
APPELLATE DIVISION
JUL 11 1990

A. She had received a purple mark on her face. I don't recall if she received any medical attention or not.
Q. Did he indicate to you whether or not he receive any injuries as a result of this altercation?
A. No, sir.
Q. Now, he was also indicating to you at that time that Gloria Simonelli kept pressing him for money, didn't he?
A. He made that statement, that she was always asking for money.
Q. Now, he also complained about her upgrading her charges, the original charges against him?
A. Oh, yes, he complained that they started out as a simple assault and progressed to aggravated assault up to terroristic threats.
Q. And he further indicated to you that at that time that he tried everything he could to talk to her, didn't he?
A. He specifically told me that he had contacted some friends of his, he had contacted an attorney, he had written her a letter to try to resolve the conflict, and to no avail.

Q. She refused to answer any of these attempts?
A. To my knowledge, yes.
Q. Okay. And he indicated to you why he wanted to contact her, didn't he?
A. Yes, he did.
Q. Why did he want to contact her, what was he attempting to do?
A. He wanted to reconcile their differences because he said that he loved her.
Q. And he wanted to go back and commence living with her again, as they had?
A. Resume the relationship.
Q. Is that true?
A. Yes, sir.
Q. Okay. Now, you indicated to the prosecutor that Mr. Highlander told you he purchased a gun a week before this incident?
A. Yes, sir.
Q. Do you have that in your report?
A. Yes, sir.
Q. You want to show it to me?
A. I have two sentences in my report.
Q. Okay, what do they say?
A. It says --

Q. You reading from your reports or your notes?
A. This is the 302.
THE COURT: Why don't you show him D-2, Mr. Davis.
MR. DAVIS: Is D-2 his notes or the report.
THE COURT: No, D-1 is the notes. D-2 is the report.
BY MR. DAVIS:
Q. Directing your attention to D-2.
A. Yes, sir.
Q. Okay. Is there anything contained in D -- what is D-2, let me ask you that?
A. It's a form FD-302 which contains the results of the interview of Mr. Highlander.
Q. All right. Now, does it indicate that he purchased a gun within a week before this incident?
A. In responding to your question, I would said yes.
Q. Yes?
A. Yes. Here it says he planned to kill Simonelli up to a week before he saw her. He advised that he had already obtained the gun.

Q. Okay. Now, the query is, does that report indicate that he purchased the gun a week before to kill Gloria Simonelli?
A. No, sir.
Q. Now, directing your attention again to the night of the homicide, when the defendant drove to the vicinity of the homicide, what did he indicate was on his mind with regard to Gloria Simonelli being within the bar?
A. He was thinking about Miss Simonelli being in the bar with another guy. He was thinking about -- as a matter of fact, he made a statement that she was picking up a guy in the bar, would take him -- take him in her -- in his car, meaning Mr. Highlander's, to his bed, and go to bed with him.
Q. Okay. Now, when he got to the point where he was indicating that he thought that Gloria was in that bar picking up another man to put in his car to take home in his bed, what was his emotional state at that time?
A. There was a touch of anger that --
Q. Okay. And did he also appear to be shaken by the situation, the way he was being treated?

A. During the -- well, it wasn't an exaggerated situation, he did appear to be somewhat angry, but not to any exaggeration.

Q. Now, isn't it also a fact that he further indicated to you that he didn't reach for the gun until he saw Gloria with the man?

A. That's correct.

Q. Now, Agent Davis, you indicated that a statement was made or that a written statement was made that Mr. Highlander read, signed and added something to the last paragraph?

A. Yes, sir.

Q. Okay. Now, directing your attention to that statement, did Mr. Highlander write that statement?

A. No, he did not.

Q. Who wrote the statement?

A. Agent Clemens wrote it.

Q. And isn't it a fact that Agent Clemens wrote that statement after he sat there and listened to the conversation and then went to another room and wrote it up and brought it back?

A. That's correct, and listened to the interview and took my notes and his notes and

wrote it up, yes, sir.

Q. Now, was that statement shown to Mr. Highlander at that point?

A. After it was written, yes, sir.

Q. Was he emotional at that time?

A. No, sir.

Q. Was he angry?

A. No, sir.

Q. Now, you've indicated that while you were taking this oral statement from him that he went through emotional crescendos, emotional highs, to, as a matter of fact, to being angry, is that true?

A. At one point he was, as I described, in the crescendo of admitting to the fact of killing Gloria, an emotional part. Some displays of anger, yes, sir.

Q. Now, did you give him an opportunity to compose himself before he read that statement and signed it?

A. The actual writing of the statement took a little while, and he was in no emotional state other than a normal state during this time, or at the time the statement was presented to him.

Q. Did you -- I'm sorry. Did you know him

before this day?
A. No, sir.
Q. Pardon me?
A. No, sir.
Q. Did you know what normal, in terms of Richard Highlander?
A. I'm not an expert in knowing what's normal in Mr. Highlander, no, sir.
Q. Now, he added something to that statement, didn't he?
A. He added the last paragraph.
Q. Did he write the last paragraph?
A. I stated before, on occasion, the last paragraph was written at his will. I do not recall who actually wrote the last paragraph.
Q. Okay. Now, I want you to take a look at it.

THE COURT: Show him the original, please.

BY MR. DAVIS:
Q. I want you to take a look at S-5, and I want you to take a look at the last paragraph, if you can, if you can, Officer. Now, does that refresh your recollection of who wrote the last paragraph?

A. No, sir.
Q. Okay. Does it refresh your recollection who wrote the last sentence?
A. I don't recall who wrote any of the last paragraph.
Q. Okay. Were you there when this statement was signed by Richard?
A. Yes, sir.
Q. Did he sign it?
A. Yes, he did.
Q. Did anyone else change anything prior to him signing it?
A. No.
Q. Tell us how he signed it, tell us what happened, physically transpired?
A. The statement was taken into him, he read it, corrections were made, he agreed that that was an accurate account of what happened, and he signed his name and dated it and he initialed each page.
Q. Okay, now, did you see him write more than his name?
A. Not to my recollection.
Q. In fact, didn't he write the last sentence to that statement?

A. I don't recall.
Q. What does the last sentence say?
A. "I still love Gloria Simonelli."
Q. What does the sentence say before that? Read the last two sentences, sir.
A. "When Gloria died, I died."
Q. All right.
A. "I still love Gloria Simonelli."
Q. Isn't there a word before Gloria?
A. Where?
Q. Read it now.
A. "When Gloria died, I died. I still love Gloria Simonelli."
Q. Okay. Now, from that entire statement, S-5, he wrote the last two or three sentences, didn't he?
A. I don't recall who wrote the last paragraph, sir.
Q. And as you look at that last paragraph, or those last three sentences, is not the handwriting different from the statement itself which you've indicated Agent Clemens wrote?
A. It appears to be different.
Q. Okay.
MR. DAVIS: That's all I have.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Thank you.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. Agent Davis, you have been asked about whether you had any information about the killing of Gloria Simonelli before you interviewed Mr. Highlander?

A. Yes, sir.

Q. Can you now recall for us what information you had before you talked to Mr. Highlander about the killing?

MR. DAVIS: I'm going to object to this, Your Honor.

THE COURT: I'm going to permit it.

BY MR. TALASNIK:

Q. You can proceed.

A. Sure. We received a communication in our office from our Atlantic City resident agency setting forth the fact that there was a warrant outstanding and a description of Mr. Highlander and the summary of the crime that he was being sought for.

Q. Do you remember what detail, if any, was contained in that summary of the crimo?

A. That Gloria Simonelli had been murdered at a restaurant by a .38 caliber handgun, I believe.
Q. Is that about it?
A. That there was mention of an execution style murder.
MR. DAVIS: Judge, I object to that.
THE COURT: Objection will be sustained. The jury will disregard.
BY MR. TALASNIK:
Q. Now, was there included in that information reference to the legal problems Mr. Highlander had at the time that he began to date Gloria?
A. I don't recall that.
Q. Was there included in there references to the possibility that Mr. Highlander had spent a lot of money on Gloria?
MR. DAVIS: I'm going to object to leading questions, Judge.
THE COURT: Sustained.
BY MR. TALASNIK:
Q. What information did you get from Mr. Highlander over and above the information you

had gotten in this directive?
A. Essentially everything received from Mr. Highlander as to the actual account as to what had happened.
Q. Now, you have also been asked by Mr. Davis with respect to the -- Mr. Highlander's condition at the time of his arrest, and I believe you indicated that there was either one can or one bottle of beer in the vicinity of his arrest?
A. That's what I recall, yes, sir.
Q. Do you recall his condition at the time of arrest in terms of intoxication?
A. He did not appear to be intoxicated or under the influence of any foreign substances.
Q. You have been asked by Mr. Davis with respect to your reference in the report to seeing Miss Simonelli's car at the Greenhouse is by coincidence, and that that was your word?
A. I believe coincidence was Mr. Highlander's wording.
Q. Okay. Was there any indication as to whether he was at the Greenhouse more than once on the evening of Gloria's death.
Q. He advised that he saw the car by

coincidence, left and then returned, so that would be two occasions.

Q. And on which occasion was Gloria shot, according to Rick Highlander?

A. On the second occasion, when he returned.

Q. You were asked a series of questions about references to the gun, do you recall that?

A. Yes, sir.

Q. And do you have before you the report that Mr. Davis had you read from? I believe it's marked D-2.

A. No, sir.

MR. TALASNIK: Mr. Davis, do you have D-2?

MR. DAVIS: I have my copy of D-2. I don't have D-2.

THE COURT: I think yours was the one that was marked, Mr. Davis.

MR. DAVIS: This one wasn't marked, Judge.

THE COURT: Well, do you know where the marking was?

MR. DAVIS: I don't know.

MR. TALASNIK: Your Honor, I can have another one marked, if Mr. --

THE COURT: May be marked as D-2.

(D-2, Report, re-marked for identification).

MR. TALASNIK: I'm showing Mr. Davis what I have now marked as D-2 to ask him if that comports with his recollection of the document that was earlier marked.

MR. DAVIS: Yes.

BY MR. TALASNIK:

Q. Agent, I'm going to show you a document that has been marked as D-2. I want you to look at just the first six pages here. Tell me if you recognize what D-2 is?

A. D-2 is the -- what we called an FD-302, it's a report of the results of the interview of Mr. Highlander on 5-12-88.

Q. I'd like you to turn to page three of that report and tell me whether there are, in fact, references to information Rick gave you about a gun?

A. Yes, sir.

Q. I'd like you to begin reading on the first paragraph with the words "Highlander attempted" and finish through the references to the gun.

A. "Highlander attempted to have Simonelli remove the charges by having various people, (Nick Liberatti and Bobby Brooks) talk to her and by writing her a letter telling her how much he loved her and that he wanted to be friends. He retained an attorney, Bud Bennington, who also called Simonelli's parents, but they refused to talk to him, indicating that he should talk to the prosecuting attorney. Highlander said he tried every angle and hoped things would settle down and go back the way it was. Highlander then related that, quote, I meant to do what I fucking did, end quote. He had cleaned the gun, a .358 magnum, and loaded it with hollow point ammunition." He said it was a .358 and not a .38 caliber pistol.

Q. Now, further down towards the bottom of that page, is there another reference to the gun rendered to you by Mr. Highlander?

A. I'm sorry, on the same page?

Q. Well, towards the beginning, at the bottom of that page and on to page four?

A. Okay. Yes.

Q. Would you begin reading at the point in that paragraph where it says "He was not

loaded"?
A. "He said he was not loaded at this time. He stated that he went to the Greenhouse Bar to kill her, and further related, quote, I knew I was going to kill that mother fucker. It was premeditated, end quote. Highlander planned to kill Simonelli up to a week before he saw her at the Greenhouse Bar. He advised that he had already obtained the gun."
Q. Thank you.
MR. TALASNIK: I have no further questions of the witness, Your Honor.
THE COURT: Mr. Davis.
RECROSS EXAMINATION
BY MR. DAVIS:
Q. Agent Davis, when you have related in this report that he cleaned the .358 magnum and loaded it with hollow points, et cetera, did he ever tell you when he did this?
A. No.
Q. Do you know, in fact, from your discussion with Mr. Highlander, how long he had had a weapon?
A. No, sir.
Q. And you don't know if he cleaned and

loaded it a month before or two months before, do you?

A. No.

Q. Okay.

MR. DAVIS: That would be all I have of this witness.

THE COURT: Mr. Talasnik?

MR. TALASNIK: No further questions, thank you.

THE COURT: You may step down, Agent. Thank you very much.

MR. DAVIS: Judge, may we approach the bench?

(Whereupon the following is heard at side bar).

MR. PRESTON: I'm arguing at this phase of the guilt phase of the trial, because it's intertwined so closely with the guilt phase. Before we commenced the trial, I was careful to make a motion that the execution style reference not be brought up, and that Mr. Talasnik talk with his witness and that it not become a part of this trial. The Court ordered that. I don't know what Mr. Talasnik did. I do know that what transpired here was that Mr.

Talasnik asked the question, over Mr. Davis' objection, which started down that path. As it started down that path, there was a period of time where Mr. Talasnik's last question left a considerable gap of time and was pointedly headed in that direction. Yet Mr. Talasnik allowed the time and allowed the opportunity for this witness to come out with exactly the type of -- not the type, the exact prejudicial information which I had made the specific motion in limine at the beginning of this trial to bar because of its highly prejudicial effect. I don't think there is any way that Your Honor can give a curative instruction to that. I think that at this time, I discussed this with Mr. Davis, and he desires to move for mistrial because of the violation of the Judge's order, your order here, and that with respect to the guilt phase, and also ask the comparable motion with respect to the penalty phase, if mistrial is not granted at this time, to move to bar the penalty phase in its entirety. I believe the type of evidence which was elicited over a specific preventative action by the defense in Your Honor's order is the kind of prejudicial

information that the cases speak of. It would repeatedly, as being the type of stuff that the jury should not even hear, the type of things that warrant new trials, and at this time, I advised the Court that if there is a penalty phase, I believe that motion is proper, and since it was intertwined with the guilt phase issue, I argued on behalf of Mr. Davis.

MR. TALASNIK: Your Honor, first of all, let me indicate that there was, notwithstanding the charge by Mr. Preston, that there was anything conscious or deliberate about the cadence of my questioning or any pauses intending to elicit any improper response, that that is absolutely untrue and it is denied. Let me also indicate that I avoided the entire area on the direct examination of the officer, recalling Mr. Preston's problem with it and my acquiescence at the beginning of the trial that that not be included in the direct testimony of the officer. The problem came in because Mr. Davis attempted to demonstrate, through his cross examination of the witness, that the witness was privy to a sufficient level of detail through warrant information he got from

the local F.B.I. office as to render the statement by Mr. Highlander untrue, or to give rise to the inference that the detail was already known to the officers and that that bears upon the credibility of the admissions that were made by Mr. Highlander. My question to the officer was simply to clarify for the jury what information he did have, so that that could be contrasted with what information was supplied by Mr. Highlander. I have no recollection of Mr. Davis making an objection and requesting a sidebar between the question that was asked and the ultimate answer that would have alerted the parties to the particular problem that is now being raised when the answer was given. Your Honor promptly instructed the jury to disregard it, and certainly would be free to remind them, if the Court felt it was appropriate and if there was a defense request to do so at any other time during the course of the trial, that they could disregard the comment. I suggest to the Court that in the context of all of the testimony that they have heard regarding the shooting of the victim by the defendant and the various admissions that

they have heard about, that the passing reference on redirect examination to that word is no where near sufficient prejudice or undue prejudice as would warrant the rather drastic remedy of mistrying either phase of the trial at this point.

MR. PRESTON: Judge, one thing that I would like to bring out, and that is the prosecutor, in eliciting the reconstruction of the witness's credibility, that he was entitled to show detail, certainly could do that, possibly, but when you ask what else, what else, what else, to the -nth degree, it soon becomes apparent that the witness took that to mean that whatever instructions he was given before he could now ignore, I think that the --

THE COURT: The motion for mistrial is denied. The motion to bar a penalty proceeding is denied as at least premature. I will, if requested by the defense, now or later or in the penalty phase or any combination or none, make a limiting instruction to the jury. It is not my inclination to do so. The record shall reflect that I deliberately chose to deal with the issue in as inconsequential a way as

possible in my own remark to the jury so as to convey as little significance of the remark as I could, and that was calculated on my part.

For the record, number one, I had forgotten, at the time, the remark was made and at the time I sustained the objection to it, that there had been a pretrial application with respect to it, although I now recall that there was. Secondly, in view of the pretrial application, I find it inexcusable that the witness was led, permitted or encouraged, implicitly or otherwise, to make the remark. I have no reason to believe that Mr. Talasnik did so deliberately, but it is, nevertheless, inexcusable. Third, I am satisfied that in the context of everything that has been presented to this jury, the remark is utterly harmless. I would rather it not have been made because it didn't aid anything, but in view of what they've already heard from other witnesses and from his own, I'm satisfied that the capacity for prejudice is ephemeral, and that in this context, with it coming up now, I would make the same ruling that I made before the trial started. That's the reason for the denial of

the motion. If the defense requests me now, or later in this proceeding or in the penalty proceeding to say something about it, I will, but I won't without such a request.

MR. PRESTON: May I have a moment with Mr. Davis, Judge? As I have said, we think, in this situation, reminding them of what they should forget is something we don't want to do. Obviously, we're caught between a rock and a hard place.

THE COURT: I understand your position. Therefore, you have no request at this point?

MR. PRESTON: None at the moment, Judge.

MR. TALASNIK: Your Honor, excuse me. The -- the next witness was not here for the Court's original ruling with regard to that phrase, if I could be excused for ten seconds to remind him.

THE COURT: Fine

(Whereupon the following is heard in open court).

THE COURT: Mr. Talasnik, you may call your next witness.

MR. TALASNIK: Thank you. State calls Agent Michael Clemens.

M I C H A E L C L E M E N S,
HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. TALASNIK:

Q. Officer Clemens, would you tell us where you're currently employed?
A. I'm Special Agent with the F.B.I. stationed in Columbia, South Carolina.
Q. How long have you been with the F.B.I.?
A. Three years.
Q. And how much of that time has been spent in Columbia, South Carolina?
A. I was assigned to Columbia in July of 1986, so this July will be three years.
Q. You would have been working in Columbia, therefore, in the month of May 1988?
A. That's correct.
Q. During the early part of May 1988, did you become aware of the existence of an arrest warrant for an individual known as Richard Highlander?
A. Yes, I did.

Q. And what was the warrant for?
A. It was for unlawful flight to avoid prosecution.
Q. And the underlying charge?
A. Murder.
Q. During the course of the early part of May, did you have occasion to work with Special Agent Davis on attempting to locate Mr. Highlander?
A. Yes, I did.
Q. And were you part of that investigation process?
A. Yes, I was.
Q. Were you able ultimately to locate Richard Highlander within the jurisdiction of Columbia, South Carolina?
A. Yes, we were.
Q. Can you tell us how or where Mr. Highlander was located and when?
A. He was located in the Five Points area of Columbia, which is basically a section of Columbia. I believe the date was May 12th, 1988.
Q. Were you present at the time of his arrest?

A. Yes, I was.
Q. What about Agent Davis, was he also present?
A. Yes.
Q. What was done with Mr. Highlander after he was arrested?
A. Agent Davis and myself transported him back to our office, which is on the 13th floor of the Federal Building in downtown Columbia, where we took him to an interview room and processed, you know, his effects, the personal effects that he had on him at that time, and began the interviewing process.
Q. Before beginning the interview process, was he advised of his rights?
A. Mr. Highlander was advised of his rights at the scene when he was placed under arrest, and then again during the formal interview process we went through what we refer to as DF-395, which states the Miranda rights on him, and then there is a place for the individual to sign and also for the witnessing agents to sign.
Q. I'm going to show you a document that has been marked as S-3 for identification, I'd like you to look at it and tell me if you recognize

what it is?
A. Yes, I do.
Q. And is that the form that was used in this rights advising process that you described?
A. Yes, it is.
Q. After that was completed, was Mr. Highlander interviewed?
A. Yes, he was.
Q. And did you remain during the course of the interview?
A. Yes, I did.
Q. At some point during the interview process, was he asked if he would agree to a written statement?
A. Yes, he was.
Q. Will you describe for the jury the exchange that gave rise to the preparation of a written statement?
A. After we had done a full interview of Mr. Highlander, it became evident that he was being cooperative with us in giving us the information, during the course of the interview, and we asked if he would sign a statement to the effect of the information that he had given us during the course of that interview. He

indicated that he would. The -- the offer was made as to -- if he would want to write the statement himself or that I would prepare the statement based on the information that had been given throughout the interview, and that he would then be able to read through that statement, make any changes, additions, deletions, or anything like that, and that the statement would reflect exactly what he wished to say, and he indicated to go ahead, make -- prepare the statement, which I then left the room and prepared that statement.

Q. He had been given the option of writing it himself?

A. That's correct.

Q. What did you use as the basis of the information that you included in the written statement?

A. I would have used the notes that were taken during the course of the interview.

Q. And did you, yourself, in fact, prepare this written statement?

A. Yes, I wrote the statement.

Q. I'm going to show you a document that has earlier been marked as S-5 for identification.

I'd like you to look at it and tell me if you recognize what it is?

A. Yes, I recognize this as the statement that I hand wrote on the evening that we interviewed Mr. Highlander.

Q. Does that appear to be the original of the statement that you hand wrote?

A. Yes, this would be the original.

Q. Will you describe what procedure you followed with Mr. Highlander after you had finished writing that document?

A. After completion of the document, would have gone back into the interview room with Mr. Highlander, read through the statement myself and then given it to him to read over so that he could assure himself that what I had written -- what I had read to him was, in fact, what was reflected in the written statement. And he read through the statement, and once he had satisfied himself that was the statement he wished to sign and take on as his own, then it was signed.

Q. Did I understand you correctly that after you finished writing the statement, you read it?

A. I believe I did, that I would have, because I hand wrote it myself, and it's in

longhand, not printed, that I would have read through it once myself.

Q. Now, when you said read through it once yourself, are you talking about reading it to yourself or reading it aloud?

A. No, I would have read it aloud in the room.

Q. In the same room with Mr. Highlander?

A. Correct.

Q. After you got done reading it aloud to him, it was then that you would present it to him?

A. That's correct.

Q. Suppose there was something in there that Mr. Highlander told you was wrong, what could be done about that?

A. That would be basically lined through on the statement itself with his initials and the initials of the witnessing agents, so that the change would be documented as having -- as being known by both Mr. Highlander and the agents that were present during that time.

Q. In this case, in the process of going over this statement, did Mr. Highlander point out anything to you that he said was wrong or

that needed to be changed?
A. The -- on the second page, the portion where I had printed out that he indicated he was wearing a red and white running suit with Rockport, I had put Rockport high top leather sneakers, and he indicated that they were not high tops, so that was scratched out and initialed by all those present. There is a -- there is a word crossed out on the last line on the second page which I can't read now. I think that was an error that I had made in writing it, but it was scratched out at that time and everybody had initialed it. It's the first word of a sentence.
Q. Now, suppose, in going through that statement with Mr. Highlander, he decided that there was something that he wanted to added, how would that be accomplished?
A. When I hand wrote the statement, I stopped at the end of the last paragraph that I had written and nothing more was placed. Anything that he would have wanted to add then would have been added to the end of the statement, and once Mr. Highlander was satisfied with the statement, then he would have -- he

was, and did, in fact, sign it on the next line after the last line of written text in the statement.

Q. In this particular case, did Mr. Highlander tell you that he wanted something added at the end?

A. Yes, he did.

Q. Who physically wrote that additional information at the end that Mr. Highlander wanted on there?

A. I did.

Q. Now, do you see any difference in the handwriting between that last portion and all the rest of it?

A. I don't. It's my writing. I mean, I know my writing. It's -- it appears slightly different than the second page, but I -- sometimes I write with the paper tilted and my letters are more slanted, and often times I write with my lettering more straight up and down. It's -- but there is no doubt that this is -- this was written by me.

Q. Do you ask Mr. Highlander to do anything on each page in an effort to demonstrate that he has read the statement himself or that he, at

least, has heard you read it to him?
A. In a written -- in a statement such as this, in an effort to show that it had been read or at least handled by the individual, the initials of that individuals will be required at the exact beginning and the exact end of the statement reflecting the contents in between those initials as being what that statement consists of, nothing more, nothing less.
Q. Do you recognize any initials on the first page of that statement that you can now say were placed there by Mr. Highlander?
A. Yes. The R L H at the top of the page right above my initials is Mr. Highlander's initials.
Q. What about on the second page?
A. Well, those initials are reflected at the top of the first page and the bottom of the second page, and again at the top of the second page and the bottom of the second page.
THE COURT: Excuse me, you want to indicate that again? I believe you misspoke yourself.
THE WITNESS: I'm sorry, the initials are reflected at the very top of the

first page and the very bottom of the first page, the very top of the second page and the very bottom of the second page, and then again at the very top of the third page, and then his signature's affixed on the line directly beneath the last line of text.

BY MR. TALASNIK:

Q. Does the third page end at the bottom?

A. No, it ends about midway on the page and --

Q. What do you do to protect against anything being added?

A. A diagonal line is then affixed from the bottom corner to the top corner of the opposite side of the page on the very last line of signatures so that nothing can be added underneath the signatures that have been placed on paper.

Q. I want you to now look through that document and answer the question whether the document appears to be in the form that it was at the time Mr. Highlander signed it and initialed it, as you've described?

A. Yes, sir.

Q. Does it appear that there have been any

additions to the statement since the time Mr. Highlander signed it?

A. No, there does not.

Q. Does it appear that anything has been removed or erased or covered over?

A. No, nothing.

Q. I'd like you to now read the statement to the jury.

A. "I, Richard Lee Highlander, date of birth, 8-10-57, Social Security account 267-27-2766, after being advised of the identities of the interviewing agents, the nature of the interview and my constitutional rights, agree to be interviewed and provide the following signed statement. Richard Lee Highlander, 5-12-88.

"I, Richard Lee Highlander, date of birth, 8-10-57 Social Security account number 267-27-2766, give the following statement freely and voluntarily and have been advised that this statement can be used in a court of law. Subsequent to a multi count indictment against me by Atlantic County for aggravated assault, terroristic threats, I made numerous attempts to reconcile with Gloria Simonelli. My attempts

were refused by her and I decided to kill her. One evening, I was riding with a friend of mine and we rode by her house but she wasn't there. We then headed to the mall to look for her and as we drove by the Greenhouse Bar I saw the car I had bought for her. I knew it was the car because I checked the license plate and it had red ribbon tied on the rear-view mirror. I wanted to get a ski mask and a gun. I wanted to get a ski mask and gun and go in the bar and kill her, but my friend said, no, wait until after dark and wait for her to come out. We then went to a bar and I had a couple of vodkas. We then went to another buddy of mine's house who was holding a gun for me and got the gun. We then went back to the Greenhouse and pulled in the lot where I saw the car still there. I wanted to go into the bar and kill her but my buddy said, no, wait for her to come out. I turned back and saw her walk out of the bar with some guy about fifteen feet behind her. I got the gun from under the seat and walked toward her between the cars. She saw me and said, oh, no. I raised the gun, cocked it and shot her. She went down and I heard her say, I don't

believe this is happening to me. I thought I missed her, so I shot her again on the ground. I then ran toward the car, drew a bead on the guy she was with and took a shot at him. We then left the area, went to Margate, then Longport, then New York City. We went to a bar and had some drinks. On this evening I was wearing a red and white running suit with Rockport leather sneakers. I'm a high school graduate with two years of vocational automotive training. I can read and write the English language. I've read the above statement consisting of two, and now sign it because it", I'm sorry. "I have read the above statement consisting of two, and now sign it, because to the best of my knowledge, it is true and accurate. I'd like to add that I was driven to do what I did by Prosecutor's Office for indicting me for minor offenses and then pushing it up to greater offenses to violate my probation. When Gloria died, I died, I still love Gloria Simonelli." And then signed by Richard Highlander, 5-12-88.

MR. TALASNIK: No further questions, thank you, Your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. DAVIS:

Q. Now, Officer, you've indicated that you received this information from Richard Highlander?

A. That's correct.

Q. Okay. And how long did you speak to Richard Highlander before you wrote this information or this statement?

A. To the best -- I'd say approximately an hour.

Q. Now, was this a continuous conversation for an hour?

A. Yes.

Q. Okay. And from that conversation, you would pick out what you considered to be important?

A. During the course of the interview, notes would have been taken about all the information that was being provided.

Q. Okay. And as I queried you, you picked out what you considered to be important?

A. That's correct.

Q. All right. Now, approximately how long

do you think it took you to read that statement?
A. To read the statement?
Q. Just then.
A. Three minutes, four minutes.
Q. All right. So you read to us a three minute statement which you had an hour's worth of conversation?
A. That's correct.
Q. Is that correct?
A. Yes.
Q. So if my arithmetic is right, out of the amount of time that you heard this statement, 1/20th of that time you put on paper in terms of the time that it took you to read it?
A. Yes.
Q. Now, you can't tell us today that what you have contained in that statement is everything that Richard Highlander told you, okay?
A. No.
Q. In fact, what you have contained in that statement really isn't in the chronological order that Richard Highlander gave it to you, is it?
A. I would disagree with that. I believe

that the interview which took place ran along chronological lines in that the statement was an effort to reflect, chronologically, events as was related by Mr. Highlander.

Q. If you'll look at your notes, are your notes in the same chronological order that that statement is in?

A. No.

Q. It isn't, is it?

A. No.

Q. So that when you wrote that statement, you set the chronological order that you wanted to put that statement in?

A. During the course of the interview, I would have taken notes as quickly as I could, and when I take notes, I move, I may skip areas in order to -- when there is a break in the interview, or a portion of time in the interview, that I can then go back and put some other information in my notes that will reflect what had taken place during the course of that interview.

Q. The question was, the document that you've just read is not in the same chronological order that Richard Highlander gave

it to you? I'm basing that on your notes.
A. Based on -- based on comparison of my original notes with the signed statement, that would be that -- that's an accurate statement.
Q. It's an accurate statement?
A. Right.
Q. And I would assume that your notes, or the way that you took your notes, was in the same manner that Mr. Highlander gave you the information?
A. As quickly as I could, under the circumstances, yes.
Q. Right. When you say as quickly as I can, that means that certain things that Richard told you, you didn't even take down, did you?
A. That's correct.
Q. So when he would speak, whatever you consider important for this case, your side of the table, you wrote it down?
A. Whatever I considered important, and as much as I could, not being a stenographer, I tried to take as copious notes as I possibly can.
Q. Why didn't you put it on tape?
A. That's not the operating procedure of the

F.B.I., it's something that's not done.
Q. You don't put it on tape. You wanted to -- you want to put it in your words and not in his words, is that what you're telling us?
A. What I'm saying is it's not the policy of the F.B.I. to tape interviews.
Q. Now, when you -- did you ever ask Mr. Highlander to, if it's not your policy to put it on tape, did you ever ask him to put it in his handwriting in his words?
A. I believe that at that time he indicated that he wished to make a statement, that we -- we asked if he would sign a statement regarding the information that he had provided, and indicated, do you want to write your own statement or shall I write a statement and then you'll be free to change it, because it will be your statement when it's signed by you.
Q. And he didn't want to write one, did he?
A. I don't believe so, no, sir.
Q. And in fact, Agent, when it came time for you to write it, you told him, in so many words, don't make me waste my time and write that statement and you not sign it?
A. That's not true.

Q. And you went into another room and wrote that statement?
A. That's correct.
Q. Now, what precluded you from writing that statement in the same room where Richard Highlander was contained?
A. I just -- it's more conducive to write in a quiet place.
Q. Well, wasn't quiet when you were taking notes, was it?
A. No.
Q. Okay. Was anything precluding you from writing down there and sitting and writing that statement in conjunction with Richard Highlander?
A. As I said, I'm not a stenographer, I don't believe I could have reflected one hundred percent of the interview in such a statement.
Q. Now, Officer, as you look at the statement that you say he signed, the vast majority of the verbage contained in that statement is your wording, is that correct?
A. That's correct.
Q. He didn't say that in there, even though you have it in quotes, and I'll start at the

second paragraph, you got -- you start right at the second paragraph. "I, Richard Highlander, date of the birth 8-10-87, Social Security number 267-27-2766, give the following statement freely and voluntarily and have been advised that this statement can be used in a court of law." He didn't tell you that, did he?

A. That is not his quote, that is mine.

Q. That is your quote?

A. That's right.

Q. That becomes his quote when he signs the statement? The question is, when he's speaking to you, that wasn't his quote, was it?

A. No.

Q. But you're right, once you write it up, it's his quote, isn't it?

A. That's correct.

Q. Now, when you get down to the next paragraph it says, "Subsequently to a multi count indictment against me by Atlantic County for aggravated assault, terroristic threats, I made numerous attempts to reconcile with Gloria Simonelli." That's not his verbage, is it?

A. Again, that would have been a recount of the information provided by him.

Q. That's your legalistic verbage and not Richard Highlander's, isn't it?
A. That -- those are my words.
Q. They're your words. The question is, they're not his words?
A. Not word for word, no.
Q. But as you told me, when you put it down there, now it's his words?
A. When he reviews the document and agrees with the document and signs the document, it becomes his statement.
Q. "My attempts were refused by her and I decided to kill her." That's not his words, that's not his words, are they?
A. Word for word from the interview, no.
Q. Yeah. In fact, you got the thought and you put it in there and then you wanted him to sign it, that's what happened, isn't it?
A. I took the notes during the course of the interview and wrote a statement that I felt accurately reflected his statements during the course of that interview.
Q. Well, if you take a look at your notes, Officer, you wouldn't find that sentence contained anywhere in your notes, would you?

A. Which sentence is that? I'm --
Q. The one we just read.
A. "My attempts were refused by her, I decided to kill her."
Q. Yes.
A. I would have to look through my notes to see if that is there. That he had planned to kill her up to a week beforehand is in my notes.
Q. That's not what I asked you.
A. Okay, I'm sorry. No, the sentence, "My attempts were refused by her and I decided to kill her" is not reflected, word for word, in my notes, no.
Q. Does your notes reflect why he killed her?
A. In exact word for word fashion, or --
Q. Yeah.
A. In --
Q. In a word for word fashion. In your notes, do you have anything in there that indicates why he was going to -- why he killed Gloria Simonelli?
A. The --
THE COURT: The record reflect the witness is examining D-3. You may proceed.

THE WITNESS: I don't see anywhere in my notes where I -- where I wrote down anything about his motivation.

BY MR. DAVIS:

Q. That's right, and you've indicated you wrote this report based on his notes, but your notes do not contain his motivation?

A. Well, I would qualify that. I -- I wrote the statement moments after the interview, and that my notes is complete as I could take them at the time do not reflect one hundred percent of my recollection during the course of that interview, and that portions of the statement would have been my recollection of the interview, my recollection being enhanced by the notes themselves.

Q. Your recollection enhanced by the notes, and from that you drew certain conclusions, and that's what you have contained in your report, in the statement?

A. In the statement. The statement reflects what I have in my notes and what I recalled from my notes at the time I wrote the statement.

Q. Let me ask you this. What condition was Richard Highlander in when he wrote -- when he

supposedly listened to you read this statement?
A. Well composed.
Q. Well composed?
A. At that time, it was a fairly calm circumstance.
Q. Now, did he, in fact, read the statement or did you read this statement to him?
A. I -- the normal way that I do something such as this --
THE COURT: No, no.
THE WITNESS: I'm sorry.
THE COURT: That's not what you were asked. The question is, did he read it or did you read it to him?
THE WITNESS: To the best of my recollection now, I would have read the statement to him first and then he would have been given the opportunity to read it and go over it himself.
BY MR. DAVIS:
Q. Isn't it a fact, Agent, that while you were reading that statement to Mr. Highlander that he was distraught and the only thing he kept saying to you, reiterating to you was his love for Gloria Simonelli?

A. I don't recall that during -- being the case during the course of my reading the statement.
Q. In fact, so much so that he took that statement and that's the only thing that he wrote on the bottom of it, and then he signed it?
A. He didn't write on the bottom of it. He indicated that he had something he wanted to add to the statement, which I wrote.
Q. And he refused to sign it till that -- till he had an opportunity to put that on the statement?
A. It wasn't a matter of him refusing to sign it. He indicated he wanted something to add to the statement, which he was free to do.
Q. In fact, he refused to sign it until it was added to the statement, isn't that true?
A. He wanted that added to the statement.
Q. And in fact, Officer, when you brought the statement to him, he had completed the statement? As far as you were concerned, you had put your last paragraph on there?
A. That's correct, I had written the statement that I thought accurately reflected.

Q. As far as you were concerned you had written it correctly, to your impression, and you had put the last -- put the last paragraph and wanted him to sign it?
A. That's correct.
Q. And he refused to sign it at that point until he indicated to you what his feeling was for Gloria Simonelli, and he wrote it there?
A. And I wrote it there.
Q. And you're trying to tell us, after looking at that statement, that's your handwriting down there?
A. That's my handwriting.
Q. Why'd you write that in a different style, if it's your handwriting?
A. I think, if you look at the I in the first word of the first paragraph on page three and the I in the second paragraph of page three, that you can see that they are very similar, and as I stated, I have -- I just write, I have several different styles of writing, depending on where I'm writing at or how I'm writing or how the paper's on the thing, but I can testify quite accurately that that is my handwriting on the third page of the statement.

MR. DAVIS: That's all I have, Your Honor.

THE COURT: Mr. Talasnik.

REDIRECT EXAMINATION

BY MR. TALASNIK:

Q. So I guess this statement that you read is just something you made up out of the blue?

A. It was made up from the notes that were taken during the course of the interview and the recollection that goes along with that when reviewing those notes.

Q. How soon after Richard completed the oral interview did you sit down to write a summary of that interview in the form of this statement?

A. It was immediate. I left the room immediately, prepared the statement.

Q. Was it at a time that your memory was fresh about what had just happened?

A. Yes. Immediately after.

Q. What does the existence of the quotation marks mean on the statement?

A. That's, as I said, the standard, the way we would write a statement, because a statement is, once it's signed by the individual, it is his statement, therefore, everything contained

in that statement is a quote or reflects that it's his statement.

Q. You've been questioned about whose words various things are, or whose words appear on the statement. Let me ask you about something behind the words, something called ideas. Whose ideas are contained in this three page statement?

A. As best I can state, I believe that the ideas and reflections within the statement that I prepared are those of Mr. Highlander.

Q. Let's lift a couple of the lines out of here and then I'm going to ask you what you remember about the oral interview that caused you to write a specific statement, okay? "Subsequent to a multi count indictment against me by Atlantic County for aggravated assault and terroristic threats." Now, do you recall there being some kind of a conversation as part of the oral interview where Mr. Highlander indicated that there was a multi count indictment against him?

A. Yes.

Q. Do you remember anything else that was said about the indictment or the charges against

him?
A. Mr. Highlander reflected that he was very aggravated because the charges were upgraded and he was trying to -- he felt that he was being treated unfairly by the Prosecutor's Office and that they were really coming after him and upgrading, trying to violate his probation, and they were just going out of their way to cause him trouble.
Q. And that occurred during the oral interview?
A. Yes.
Q. So your reference to subsequent to a multi count indictment is like your shorthand for that, or your summary of what he said?
A. Yes, that's correct.
Q. "I made numerous attempts to reconcile with Gloria Simonelli." Was that discussed by in Mr. Highlander during the oral interview?
A. Yes, it was.
Q. And what did he tell you about that?
A. He had indicated at one point in time that he had written a letter to Gloria asking basically, he to be friends and reconcile to the point of at least a friendship. He indicated

that he had hired an attorney to try to act as an intermediary. He had some friends of his -- I assume at this point, I don't really recall whether they were joint acquaintances or friends of his that he had, go to Gloria trying to intercede on his behalf. These efforts were made in an attempt to reconcile that relationship.

Q. So those are ideas or views given to you by Mr. Highlander?

A. That's correct.

Q. And you have them boiled down simply to "I made numerous attempts to reconcile."

A. Yes, that's fair to say.

Q. "My attempts were refused by her and I decided to kill her." Now, during the course of the oral interview, did Mr. Highlander ever indicate, in his words, that he decided to kill Gloria?

A. I've indicated in my notes at one point where he stated that. That is, "I had planned to kill her up to a week beforehand" and that -- I'm not sure that's reflected again in my notes later on.

Q. So the notion that you have broken down

into "I decided to kill her." That comes from the oral interview and statements made by Rick Highlander?

A. Yes. Another place in my notes I have written down, which I believe would be -- I would have written it as a direct quote, was "I meant to do what I did, I'm not sorry I did it. I meant to do what I did." He had, in fact, planned to carry out this act. "I did what I felt I had to do." Those statements such as that would have then, you know, led me to write down that 'I decided to kill her." He made a conscious decision to do what he did, alleged to have done.

Q. "We rode by her house but she wasn't there. We then headed to the mall to look for her, and as we drove by the Greenhouse Bar, I saw the car I had bought for her. I knew it was the car because I checked the license plates. It had the red ribbon tied on the rear-view mirror." Now, is there anything that you can recall in the oral interview that gave rise to that information that you've summarized about going to her house first and then seeing her car outside the Greenhouse?

A. What I have in my notes is that "He was riding down the beach block, saw her car parked behind the Greenhouse Bar, a Camery with a red ribbon on the mirror." That was what I had written down in my notes. Again, having written a statement immediately subsequent to the oral interview, there would have been things that I cannot independently recall now from the oral interview that would be reflected in the statement.

Q. "I wanted to get a ski mask and gun and go in the bar and kill her, but my friend said, no, wait until after dark." Do you recall where that information came from?

A. I have written in my notes, "Let me go home and get a ski mask and I'll go in and blow her away. The other guy said, wait till dark out and then do it." And I would have written this statement from that portion of my notes and my recollection.

Q. "We then went to a bar and I had a couple of vodkas. We then went to another buddy of mine's house who was holding a gun for me and got the gun. We then went back to the Greenhouse and pulled in the lot where I saw the

car still there." Do you recall that information coming from the oral interview with Rick Highlander?

A. The information reflected in my notes and hand is that I have written "A couple of vodkas, went to a buddy who was holding a gun, got the gun, went back, was going to go in and driver said, wait. Just then I saw her come out, walked toward her." My notes continue.

Q. "I turned back and saw her walk out of the bar with some guy about fifteen feet behind her, I got the gun from under the seat and walked toward her between the cars." Is that information that came from the oral information with Rick Highlander?

A. Again, "Went back, was going to go in, drive said, wait. Just then I saw her come out, walked toward her." And that, along with my recollection at that time, would have been paraphrased into that portion of the statement.

Q. "I raised the gun, cocked it and shot her. She went down, I heard her say, I don't believe this is happening to me. I thought I missed her, so I shot her again on the ground." Is that information that you obtained through

the oral interview with Rick Highlander?
A. I have -- I've written down, "cocked" and then back prior to that I have written "She said, oh, no, shot her once and I blew her away. I don't believe this is happening to me. Shot her again on the ground, and then drew a bead on him and tried to shoot him."
Q. That would account for the "I ran towards the car, drew a bead on the guy she was with and took a shot at him."
A. Correct.
MR. TALASNIK: No further questions, Your Honor.
RECROSS-EXAMINATION
BY MR. DAVIS:
Q. Agent, you can account for what's in the report; can you account for what you didn't put in, statements that he made to you?
A. Now, here and now independently.
Q. Yes, here and now independently?
A. I don't know that I could remember specific information from the oral interview that's not reflected in even my notes or the statement or 302, which was written.
Q. And who decided what goes in this

statement?
A. I wrote the statement.
Q. You decided what goes in?
A. That's correct.
Q. And you decided also what stays out?
A. Again, I wrote the statements as complete and accurately, based on the interview as I felt.
Q. I understand that, Agent. But I'm indicating that you also made the conscious decision what should not be included in the statement?
A. The statement does not reflect one hundred percent of the interview and I decided what was in the statement, that's correct.
Q. Okay. Ask you one more time, you also decided what should not be included within the statement?
A. That's correct, that's a correct statement.

MR. DAVIS: That's all.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Nothing further, Your Honor.

THE COURT: Thank you. You may

step down, Mr. Clemens. Thank you very much. Take those documents back to the prosecutor, please. Take five at this point, ladies and gentlemen, be back with another witness in just a couple minutes.

(Whereupon the following is heard out of the presence of the jury).

THE COURT: Who's next?

MR. TALASNIK: Your Honor, I have two fairly brief witnesses, by way of catch-up. Sergeant Hannigan from the ballistics lab, Investigator Rummler from the Grand Jury Section of our office, and then I also have Investigator Juliano, whose testimony will be much longer, since it involved the taped statement.

THE COURT: All right. Besides those three, and I'm talking about --

MR. TALASNIK: That's it.

THE COURT: Okay, so you would anticipate resting after Juliano?

MR. TALASNIK: Yes, Your Honor.

THE COURT: I believe we can get -- start Juliano today.

MR. TALASNIK: Well, yeah, I could start him and perhaps we could break.

THE COURT: You planning on playing the statement?

MR. TALASNIK: Yes, Your Honor.

THE COURT: How long does it run?

MR. TALASNIK: More than an hour.

THE COURT: I'd like to be able to start Juliano today then, if possible. What we may do then, Mr. Davis, it sounds like, is go as far as we can today, finish Juliano tomorrow and then whatever time tomorrow we don't use for the testimony, we have a lot of work that we can do without the jury, a lot of things to discuss.

MR. DAVIS: May we approach the bench about something, Judge?

(Whereupon Court takes a brief recess at 3:12).

(The following is heard before the jury at 3:25).

THE COURT: Mr. Talasnik.

MR. TALASNIK: Thank you, Your Honor. State calls Sergeant John Hannigan.

J O H N H A N N I G A N, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Sergeant, where are you employed?

A. Currently in the New Jersey State Police, currently assigned to the Ballistics Unit at the Southern Regional Lab in Hammonton, New Jersey.

Q. And how long have you been with the State Police?

A. Twelve years.

Q. And how much of that time has been spent with the ballistics lab in Hammonton?

A. I've been in Hammonton as well as Trenton, and they were both conjunctive terms there, but I've been with the ballistics unit approximately five and a half years.

Q. What kind of educational background do you have to be assigned to a ballistics section within the State Police?

A. There is really no school that trains you to be in ballistics. What it is is it's a lot of on-the-job training agumented by visiting firearms factories, ammunition manufacturers and seeing the way that firearms are manufactured, ammunition components are put together, as well as going to school, as well as assemble and disassemble and trouble shooting firearms.

Q. Have you, in fact, attended various schools to sharpen your skills in ballistics?
A. Yes, sir, I have. I guess, to date, I've probably spent a month and a half, if you would equate that to forty hours a week, approximately six forty hour weeks in various training institutions and manufacturing plants up and down the east coast.
Q. And have you had occasion to just recently finish one?
A. As a matter of fact, I just got back Friday, yes, sir.
Q. And what kind of school was that?
A. That was for the -- it's run by Heckler and Corch (phon) which is a manufacturer of the best that the State Police currently could issue pistol with the P-7ME, which is the best we currently have, and also shotguns and machine guns which give you a broad overview of the weapons.
Q. Do you use information that you get from these factory tours and classes in your work at the State Police?
A. Absolutely, it's critical to know the type of barrelling, how they are manufactured,

weapons are assembled or disassembled, as well as what happens upon discharge against the confines of the gun.

Q. And you've been working continuously with the ballistics section for at least the last five years or so?

A. Yes, sir.

Q. Have you ever had occasion to ever testify in a Court in New Jersey on ballistics?

A. I testified in numerous trials throughout the State. I believe currently I've testified in fourteen of the twenty-one counties in the State of New Jersey.

Q. On those occasions, have you ever been qualified as an expert in the field of ballistics so that you can offer opinions about ballistics matters?

A. In each and every time that I testified, I was qualified at the beginning.

MR. TALASNIK: Your Honor, I would offer Sergeant Hannigan at this point as an expert in the field of ballistics.

MR. DAVIS: No objection, Your Honor.

THE COURT: Ladies and gentlemen,

as you will recall from the other day, witnesses are offered to testify as an expert which, if I approve it, means that he may be allowed to testify, in part, on the basis of opinions or conclusions that he will give rather than necessarily being limited to specific facts. I will permit him to testify as an expert. It's your job to evaluate his testimony, to evaluate his training, background, qualifications and experience, and decide for yourselves, on the basis of your evaluation of his testimony, whether you find his conclusions to be persuasive or satisfying or credible to you. Mr. Talasnik.

MR. TALASNIK: Thank you.

BY MR. TALASNIK:

Q. What is ballistics?

A. Ballistics technically is a study of projectiles in motion, and if there is anything that I don't do is study projectiles while they're in motion. Essentially, it's a study of firearms and their relationship to the bullets that were discharged and shells that were discharged within the firearm.

Q. I'd like to direct your attention to the

spring of 1988 and ask whether you became involved in an investigation that focused upon the death of Gloria Simonelli?

A. Yes, sir, I was.

Q. At what point did you become involved in any investigation to testify about this matter?

A. On April 26th of 1988 I received several pieces of evidence from the Atlantic County Sheriff's ID Bureau, Mays Landing, New Jersey. The evidence was delivered by one Sergeant Bruce Harbison.

Q. I want to show you a two page document that has already been marked as S-39 for identification. I'd like you to look just at the first page of it. Tell me if you recognize what that is?

A. Yes, sir. This would be a Xerox copy of the original request that I received on that date giving the information that I just gave.

Q. What's the purpose of having the document like that?

A. It just shows continuity of evidence.

Q. And does it, in fact, indicate delivery of some items by Sergeant Harbison?

A. Yes, sir, it does.

Q. And does it describe what was delivered?
A. Yes, sir, it does.
Q. What does it say was delivered to you?
A. There were a total of seven specimens listed, number five was crossed out and was not submitted. The first specimen was a lead fragment from the wall under deck right side. The second specimen was lead fragment from molding around the entrance to passage under deck right side. The third specimen was a lead fragment from wall entrance to passage under deck left side. The fourth specimen was a lead fragment from the ground approximate center of passage under deck. Number five again was deleted. Number six was a lead fragment. And number seven was copper fragment.
Q. How do you keep track of specimens like this that get delivered to you at the lab so that you're in a position to match up the specimen with the request?
A. I get it into the laboratory, the first thing I do is assign the case a laboratory number, in this case the case was given HB1744. The 1744 is a sequential, HB just indicate Hammonton ballistics.

Q. I'm now going to show you an envelope that has earlier been marked as S-38 for identification. I'd like you to look at that and tell me if you recognize what it is?
A. This was the original envelope that all the specimens were submitted in. On the outside of the big envelope is the lab number HB-1744.
Q. And what's inside?
A. Within the envelope there are six smaller envelopes, each with a number of writings on it, and they are marked BH-1, BH-2, BH-3, BH-4, BH-6, BH-7 as well as all being marked with the laboratory number HB-1744.
Q. Now, with respect to the first four envelopes, what was it that was represented in the envelopes?
A. They would be the four spent lead fragments on the wall under deck right side, et cetera.
Q. So they were all represented to you as being lead fragments?
A. Yes, sir.
Q. Did you have occasion to examine the contents of each of those four envelopes?
A. Yes, sir, I did.

Q. And in examining those, did you make use of your training and experience in attempting to evaluate what it was you were looking at?
A. Absolutely.
Q. Based upon that examination and your training and experience, were you able to come to a conclusion as to what those four fragments were?
A. It was my conclusion that they were all portions of a discharged copper-coated lead bullet, and it's all indicated on each one of the envelopes, as well as the weight of the particular piece of lead.
Q. All right. Are you able to tell anything else about the four, other than they were lead fragments from a copper-jacketed bullet?
A. No, sir, there was insufficient marks on the bullets. They were twisted and mutilated to such an extent that the rifling, which is the area of concern on most bullets that I see that I need to make my microscopic comparisons, it was all twisted, bent over and/or missing. I don't know what portion, what the original size of the bullet was, so I have no way of knowing how much was missing. I believe the total

weight on all four of these things didn't exceed like eighty grains, which is really a minute amount.

Q. How does that amount relate to one lead -- one lead core of one copper-jacketed bullet?

A. Depending on the weight of the bullet. They manufacture numerous bullets for various calibers. You can get something, to the best of my recollection, nine or ninety-five grain bullets are the smallest they make in that .38 caliber, and they go up to like two hundred grains, so as it would relate to a portion of a core, the smallest bullet it would be the better portion, therefore, the largest bullet would be maybe a third, if that.

Q. With respect to the four lead fragments that you examined, are you able to conclude how many bullets gave rise to those lead fragments?

A. No, sir, I'm not.

Q. Are you able to conclude what type of bullet or what caliber of bullet the lead fragments were from?

A. No, sir, I'm not.

Q. Now, I want you to move to item six and seven. Was there an indication to you of what

those items were and where they came from?
A. There was no indication where they came from. The request indicates one would be a lead fragment and the other would be a cooper fragment, and that's the only indication I have on my request.
Q. All right. Would you remove the contents of the envelope marked six, and first tell us whether you recognize what it is?
A. Yes, sir, I do.
Q. What do you recognize it as being?
A. This is the lead core -- excuse me, the lead core from a jacketed bullet. In order to make further explanation to the jury, I have some separated specimens that might --
Q. Well, yeah, we'll get to that. At this point, I just want you to tell us whether you recognize what it is?
A. Yes, sir, it is marked BH-6 and it also has a laboratory number HB-1744 scribed on the bullet.
Q. Okay. Now, tell us generally what that thing is that you've got in your hand?
A. This is the piece of lead that is surrounded by the copper jacket on what we --

what you would normally see when you look at a cartridge. You see a portion of the lead exposed and surrounded by a cooper jacket. It's just a weighted insert, if you will.

Q. Okay. And in what condition is it?

A. The nose obviously is quite flattened and the base is very intact. The only portion would be the nose has expanded and pushed down on both sides. Mushrooming is what we call that.

Q. Now, I want you to remove the contents of the envelope marked number seven. Tell us whether you recognize what that is.

A. This is the copper jacket that the lead core would go into. It is, in fact -- it does, in fact, have rifling on it, it does have eight lands and eight grooves with a right hand twist, again, marked number seven with the lab number HB1744 scribed on the bottom by me.

Q. Now, did you make an examination of those items marked six and seven?

A. Yes, sir, I did.

Q. Based upon that examination, are you able to conclude whether they were, at one time, part of the same bullet?

A. It's not a positive assumption that I can

make. It's a mental assumption, but I can never say the two were ever together.

Q. Okay. Can you tell us whether they are compatable?

A. Very much so.

Q. It's -- based on your examination, are you able to tell us about the caliber of the bullet that would have ejected that projectile?

A. This is a .38 special caliber jacket, in this case, without the core, and it could have been fired from a .38 special revolver or .358 caliber revolver.

Q. Well, now, you've told us that it appears to be a .38 special?

A. It is.

Q. What kinds of guns are capable of ejecting that bullet?

A. This particular bullet?

Q. Yes.

A. A .38 special or a .358 magnum.

Q. If I were to tell you that there was evidence that the gun that was used in a particular case, this particular case, was a .358, is there anything inconsistent about that bullet having been fired from a .358 revolver?

A. No, sir.
Q. What is the difference then between a .38 special bullet an .358?
A. The only difference between a .38 special and a .358 is the case length, not the bullet, the case length between the two cartridges. .358 is approximately a tenth of an inch longer, the length of the case. When they manufacture the cylinders for the various revolvers, when they make a cylinder for .38 special, it's reamed out so far to accept a certain length cartridge. If you attempt to put a .358 magnum in a .38 special revolver it will sit back from the back of the cylinder approximately something less than a tenth of an inch, whereas in a .358 it will accept the .38 special caliber bullet because it is reamed out further and it will easily seat and fire inside the weapon.
Q. So a .358 revolver can shoot both .358 ammunition and a .38 special ammunition?
A. That's correct.
Q. Okay. What is a hollow nose bullet.
Q. It's just a cartridge which has the nose portion of the bullet hollowed out.
Q. And what effect is there to a hollowed

out bullet?
A. The design, according to the manufacturers, is for stopping power, rather than having a pointed bullet that would enter and possibly exit whatever the person was shooting at, the hollow point bullet has a tendency to mushroom, that is, the nose peels back in all directions, because you have a hollow portion in the front and it allows it to stop before it exists, and it's considered safer.
Q. Safer. I don't understand.
A. Well, just -- you don't have to worry about an exit wound as far as, if you're shooting game, you don't want the possibility of something protruding through an animal and possibly hitting somebody else.
Q. What about if you're shooting a person?
A. The same thing would apply.
Q. Less chance of it coming out the other side?
A. Yes, sir.
Q. In examining a bullet or core that would be removed from a victim, would there be any objective evidence on that core that could lead

you to conclude that it was a hollow nosed bullet?

A. Well, you would generally have mushrooming if the bullet were to separate or break up, or anything, in the object. There would be more of a cutting in a grooving rather than the mushrooming effect that would be consistent with the hollow point.

Q. Did you have occasion to examine the lead core which was submitted to you in, I believe, envelope six?

A. Yes, sir, I did.

Q. And are you able to come to a conclusion, based on your training and experience, as to whether that was a hollow point bullet?

A. It's my opinion that it is, in fact, or was, in fact, at one time, a hollow point bullet.

MR. TALASNIK: Okay, thank you. Your Honor, I have no further questions of the witness.

THE COURT: Mr. Davis.

MR. DAVIS: I have no questions, Your Honor.

THE COURT: You may step down,

Sergeant. Thank you very much. Mr. Talasnik.

MR. TALASNIK: The State would call Investigator Craig Rummler.

C R A I G R U M M L E R, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. TALASNIK:

MR. DAVIS: Judge, may we approach the bench?

(The following is heard at sidebar).

MR. DAVIS: Judge, with regard to this next witness, I think he's here for the purpose of indicating that there is an outstanding indictment.

THE COURT: What?

MR. DAVIS: He's here --

THE COURT: What outstanding indictment?

MR. DAVIS: Against Richard Highlander with regard to Gloria Simonelli.

MR. PRESTON: The old indictment on the assault?

MR. DAVIS: The assault.

THE COURT: Oh, the one that -- the record will reflect that I believe I've dismissed that indictment. What's the -- what -- let's find out, what's your proffer here?

MR. TALASNIK: This is the witness who would testify that, on the 30th of March, he interviewed Gloria Simonelli regarding the aggravated assault charge, that he took a sworn statement from her, that he later testified before the Grand Jury that there was an indictment and he would identify the statement and he would identify the indictment and explain briefly the process of discovery, all of this on the issue of her willingness to testify, as Your Honor ruled admissible on the motive.

THE COURT: What's the application?

MR. DAVIS: Judge, what we're indicating is the only relevance of his testimony is the fact that there is an outstanding indictment. Other than that --

THE COURT: Was an outstanding--

MR. DAVIS: Was an outstanding indictment.

THE COURT: Fact of which I can

take notice.

MR. PRESTON: The other stuff's all hearsay.

THE COURT: Well, I'm not going to permit -- I don't understand that I'm being asked to permit this witness to testify as to the substance of what she told him.

MR. TALASNIK: No.

THE COURT: As far as procedure is concerned, I'll permit the testimony.

MR. TALASNIK: Thank you.

(Whereupon the following is heard in open court)

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Mr. Rummler, where are you currently employed?

A. Atlantic County Prosecutor's Office.

Q. How long have you worked there?

A. Just a little over two years.

Q. In what capacity are you employed?

A. I'm County Investigator with the Grand Jury Section.

Q. What does a county investigator with the Grand Jury Section do?

A. I receive the cases prior to them being presented to Grand Jury and do whatever's necessary on the file for that presentation.
Q. Included within the phrase, doing whatever's necessary, are you ever called upon to interview victims or witnesses with respect to cases?
A. Yes, sir, many times.
Q. I'd like to direct your attention to the 30th of March, 1988, and ask whether you were involved in an investigation that focused upon certain complaints made by Gloria Simonelli?
A. Yes, sir, I was.
Q. And in what capacity were you involved with that case on the 30th of March?
A. I was assigned that particular file and I took a sworn statement from Ms. Simonelli.

MR. TALASNIK: Your Honor, I have a five page document that I'd like to have marked simply for identification.

(S-54, Five page document marked for identification)

MR. TALASNIK: I would show S-54 to Mr. Davis.

BY MR. TALASNIK:

Q. Investigator, I want to show you a document that has now been marked as S-54 for identification. I'd like you to look at it and tell me if you recognize what it is?
A. Yes, sir, I do.
Q. What do you recognize it to be?
A. It's the sworn statement that I took from Miss Simonelli on the 30th of March.
Q. Now, what do you mean by sworn?
A. She was placed under oath and the statement was taken and was signed by her and by myself.
Q. Do you recognize the signatures on there as yours and hers?
A. Yes, sir, I do, sir.
Q. At the time that you interviewed her, do you recall if she had any kinds of documents with her?
A. Yes, she did.
Q. And what did she have?
A. The restraining order, domestic violence restraining order.
Q. After completing the interview with Ms. Simonelli, I'd like you to think forward to Wednesday, the 6th of April, 1988. Did you

again have occasion to be involved in this case?
A. Yes, sir, I did.
Q. In what capacity?
A. I testified before the Grand Jury.
Q. And what kind -- where did the information come from that you presented to the Grand Jury?
A. From the sworn statement that I had taken from Miss Simonelli.
Q. As a result of your appearance before the Grand Jury, do you know if an indictment was returned?
A. Yes, sir, it was.
Q. I'm going to show you an item that has been marked as S-37 for identification. I'd like you to look at it and tell me if you recognize what that is?
A. Yes, sir.
Q. What do you recognize it to be?
A. This is the indictment that's handed up at the end of the day when presented to the Grand Jury and it is an indictment.
Q. Who's the defendant named in the indictment?
A. Richard Lee Highlander.

Q. In how many counts is the indictment?
A. There is three counts, sir.
Q. And what are they?
A. Aggravated assault, terroristic threats and criminal restraint.
Q. Now, Investigator, what would happen with the indictment and any police reports or interviews that are part of the case with respect to a defendant or his lawyer?
A. All this information would be photocopied and then would be given to the defendant and his attorney as discoverable information.
Q. Do you know if that was done in this case?
A. I'm not sure, sir. I would assume it was, though, as a normal course of business.
Q. Okay.

MR. TALASNIK: Thank you, I've no further questions.

THE COURT: You may cross examine.

MR. DAVIS: No, Your Honor, no questions.

THE COURT: You may step down investigator. Thank you very much.

THE COURT: Ladies and gentlemen,

you may remember, I believe last week when we started the case, I explained to you the concept of discovery. I didn't have in mind this particular indictment, but in general, as I think I explained to you last week, that once someone is indicted or charged in a case, the Rules of Court provide in the ordinary course that there is a process of what is called discovery, where the attorneys, the prosecutor and the defense attorney, exchange information, what the case is about and about what information exists, and that is called the discovery process and takes place after the filing of the charges and before any trial. Okay.

What I would like to do, I think, is take a few minutes this afternoon and just get some basic information down and then recess and pick up tomorrow.

MR. TALASNIK: Very well, Your Honor.

THE COURT: You may call your next witness.

MR. TALASNIK: Investigator Juliano.

A L J U L I A N O, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Investigator Juliano, where are you currently employed?

A. I'm employed by the Atlantic County Prosecutor's Office in the Major Crimes Squad, Homicide Unit.

Q. And how long have you been employed by the Prosecutor's Office?

A. Approximately two years eight months.

Q. And can you tell us what the Major Crimes Squad is?

A. Major Crimes Squad is charged with investigating all homicides or suspected homicides that occur within the County of Atlantic.

Q. Were you a part of that unit during the months of April and May 1988?

A. Yes, sir, I was.

Q. And in that capacity, did you have occasion to become involved in the investigation into the death of Gloria Simonelli?

A. Yes, sir, I did.
Q. I'd like to direct your attention, if I may, to the 12th of May 1988, and ask you whether you received any information regarding attempts to locate Mr. Highlander?
A. Yes, sir. The F.B.I. Agent Jack Reamer from Atlantic City notified me that F.B.I. agents in Columbia, South Carolina would be interviewing a witness in the attempt to locate Mr. Highlander.
Q. Do you remember about what time of the day this was on the 12th of May?
A. I don't know the exact time, sir. I believe it was maybe 9:00 a.m.
Q. Okay. Did you get additional information through the F.B.I. with respect to the location of Mr. Highlander himself later that day?
A. I was informed that Mr. Highlander was apprehended later that day.
Q. And do you remember about what time you received notice that he had been apprehended?
A. I believe it was approximately six in the evening, sir.
Q. Were you advised where he had been apprehended?

A. Just in Columbia, South Carolina.
Q. As a result of being advised that he had been apprehended, what were you assigned to do?
A. I was assigned, along with Lieutenant Raymond Welsh of the Margate City Police Department, to respond to Columbia, South Carolina and to pick up Mr. Highlander, if he waived extradition, interview him and bring him back to New Jersey.
Q. Why were you one of the ones sent down?
A. I was the case investigator in this case.
Q. What about Lieutenant Welsh?
A. He was the case investigator from Margate.
Q. Did you actually meet up with Lieutenant Welsh on the evening of the 12th of May?
A. Yes, sir, I did.
Q. And where did the two of you go?
A. Went to Bader Field and began taking connecting air flights to Columbia, South Carolina.
Q. Do you remember about what time you arrived in Columbia, South Carolina?
A. It was after midnight.
Q. And what did the two of you do?

A. We got a motel room and spent the night there.
Q. When you awoke the next morning on the 13th, where was the first stop that you and Lieutenant Welsh made?
A. Our first stop was to the F.B.I. office in Columbia, South Carolina approximately ten a.m.
Q. And why did you go there?
A. For the purpose of interviewing the F.B.I. agents that apprehended Mr. Highlander.
Q. Did you, in fact, converse with any of those agents?
A. We did, we talked to Special Agent Davis.
Q. Was he the only one you talked to that morning?
A. Yes, sir, at that time.
Q. After talking with Special Agent Davis, what was the next thing that you and Lieutenant Welsh did?
A. We were informed that Mr. Highlander was scheduled for a hearing, a federal hearing, an extradition hearing in front of the U.S. Magistrate, and we followed the F.B.I. Agents Davis and Clemens to the Federal Courthouse,

first to the Richland County Jail, where they picked up Mr. Highlander, and then to the Federal Courthouse.

Q. And did you have occasion to see Mr. Highlander that day?

A. Yes, sir, on several occasions.

Q. Were any special requests made by Mr. Highlander that morning with respect to personal matters?

A. Later on, when we had contact with him, he requested that he be allowed to go back to the Richland County Jail where he could freshen up, put on new clothes and get something to eat.

Q. Was he permitted to do so?

A. Certainly.

Q. Did you, therefore, leave his company for some point around mid day?

A. Yes, sir, about noon.

Q. Did you later that day return to the Richland County Jail to pick up Mr. Highlander?

A. Yes, sir, we did.

Q. By that time, he had already been turned over to your custody?

A. Well, he wasn't actually turned over to our custody until he was released from Richland

County Jail.

Q. What was your purpose in going to the Richland County Jail on the afternoon of the 13th of May?

A. At that time, it was to interview him and to go back to New Jersey.

Q. And who was with you when you went to see Mr. Highlander and attempted to interview him?

A. Lieutenant Welsh was with me.

Q. Did you get a chance to see and talk to Mr. Highlander that afternoon?

A. Yes, sir, I did.

Q. And do you recall about what time that was?

A. Approximately 2:10 p.m.

Q. What was the first thing that you and Lieutenant Welsh did when you saw Mr. Highlander?

A. First, we introduced ourselves, told him why we were there. I told Mr. Highlander we'd be taking him back to New Jersey, and I then, at that time, advised him of his constitutional rights, and told him that I'd like to talk to him about this crime.

Q. Now, you had had occasion to see Mr.

Highlander during the morning before he returned to the jail to freshen up?
A. Yes, sir.
Q. How did he appear to you through the morning?
A. He appeared, the best way to describe him would be normal, healthy person. He wasn't overly excited, he was calm.
Q. What about after lunch when you went back to the County Jail, how did he appear to you?
A. He was, I'd describe him as almost friendly to us. He was conversant, he wanted to tell his story.
Q. How about physically, how did he look?
A. Fine.
Q. Were you able to tell whether he had been able to, in fact, shower, change clothes, as he had requested?
A. Yes, sir, he had fresh clothes on.
Q. Okay. What procedure did you and Lieutenant Welsh use in advising him of his rights in Richland County Jail?
A. We've a standard rights form entitled Your Rights, which I read Mr. Highlander the five points on the constitutional rights. At

the end of the five points is a statement wherein the person being interviewed reads the statement back to you. This Mr. Highlander did. And then he signs it -- if he waives his rights, he signs on the space provided for his signature. We witness it and put the time down.

Q. Okay. An Investigator, I'm going to show you a document that has earlier been marked as S-7 for identification. I'd like you to look at it and tell me if you recognize what that is?

A. Yes, sir. This is the original, Your Rights form read to Mr. Highlander by me and witnessed by Lieutenant Raymond Welsh of the Margate Police Department, dated May 13th, 1988.

Q. Are there signatures on that document that you recognize?

A. Yes, there are.

Q. And whose signatures do you recognize?

A. My signature, Raymond Welsh's signature and Richard Highlander's signature.

Q. After that document was gone over with Mr. Highlander, did you ask him if he would be willing to speak with you about the death of Gloria Simonelli?

A. Yes, sir, I did.

Q. And how did he reply?
A. He said he would speak to us concerning this.
Q. Was Lieutenant Welsh present when the two of you spoke with Mr. Highlander?
A. Yes, sir, he was.
Q. And did he remain with you throughout whatever interview took place?
A. Yes, sir, he did.
Q. I want you to explain the interview process, if any, that you used in interviewing Mr. Highlander there in the Richland County Jail?
A. Yes, sir. At that time, after I read Mr. Highlander his rights and asked him to speak to us, I also asked him if he would provide us with a sworn taped statement. He declined at that time. His reason, at that time, he said was because he didn't know us well enough. Of course, I agreed to take an oral statement from Mr. Highlander, and I asked him, basically, what, and did he kill Gloria Simonelli.
Q. Was the interview a situation where you asked specific questions that called upon him to give specific answers?

A. Not initially. Initially I wanted to get Mr. Highlander's story, and that is what he wanted to give, but in an interview of that type, you use that kind of technique, just ask for an explanation, and also pointed questions at times.

Q. As best you can now recall, how did Mr. Highlander begin to recount the events that led to the death of Gloria Simonelli?

A. He -- he began by taking us back before the death and layed some ground work, I guess you might say.

Q. What did he include by way of ground work?

A. He advised me that Gloria Simonelli had filed charges against him and that there had been a restraining order against him filed by Miss Simonelli.

Q. Did he indicate how he felt about the charges that were filed against him by Miss Simonelli and about the restraining order?

A. Yes, sir. He indicated and stated that he was very upset, extremely upset about the fact that she filed those charges against him.

Q. Did he say why?

A. Yes, sir, he felt that because the charges were indictable that there was a chance that he might violate, if convicted, violate a parole that he was currently serving, and that if he violated that parole, he would certainly go back to prison.

Q. All right. What was the next thing that he began to tell you about after he expressed his concern about going to prison over these charges from Gloria?

A. Well, he stated that on numerous occasions he had tried to contact Miss Simonelli to talk to her about these charges and that he was unable, or she refused to talk to him about these charges.

Q. Did he indicate to you what decision he made after he was unsuccessful in talking to Gloria or trying to get her to drop the charges?

A. Yes, sir. He said that at one time, he felt backed against the wall and that the only way of getting out of going to prison was to kill Gloria Simonelli.

Q. Did Mr. Highlander then begin to discuss the events of the day that Gloria died?

A. Yes, sir, he did.

Q. Did he make any reference to any specific locations?
A. Yes, sir. The Greenhouse Bar.
Q. What did he tell you about the Greenhouse Bar?
A. He told us that he knew that she frequented the Greenhouse Bar and this, in effect, what he called plan to kill her. He said he planned to kill her about a week, and that the Greenhouse Bar played a very important role in that, because he knew that she frequented the place.
Q. Okay. Go on.
Q. He stated that on the 25th of April of 1988, that he and a friend were driving around Margate looking for her when Mr. Highlander saw her car parked behind the Greenhouse Bar in the parking lot.
Q. Did he say when this was, when this sighting of Gloria's car occurred?
A. I believe he said it was approximately 5:30 in the afternoon.
Q. How -- what did he say he did in response to seeing and identifying her car?
A. Well, at first he was going in there and

shoot her, but he decided to wait till dark, until she came out and do it.

Q. Where did he -- where did his description go from there?

A. As far as what he did, sir?

Q. Yes.

A. He said that he and a friend, who was in the car with him, then went to another friend's residence and that Mr. Highlander picked up a gun that he'd been keeping there. From there they went to another location where he stated that he took what's known as a speedball, a combination of heroine and cocaine, and then returned to the Greenhouse Bar later that evening.

Q. Did he say why he went back to the Greenhouse that night?

A. To kill Gloria.

Q. Did he describe the return trip to the Greenhouse and what happened there?

A. He described what occurred when he arrived at the Greenhouse with his friend.

Q. How did he describe it?

A. He said they pulled into a parking lot and they observed Gloria coming out of the rear

of the Greenhouse Bar, fairly close to a male companion. When he saw Gloria come out of the Greenhouse, he reached under the passenger seat, he was in the front right passenger seat, reached under the passenger seat and retrieved the gun that he put there, cocked the hammer back and got out of the car. He said he held the gun down at his side and he approached Gloria and the companion and that when he was about ten feet away from Gloria, he raised the gun, pointed at her and fired a shot. He said that she went backward and said, oh, no, I don't believe this is happening, and he fired again. He then fired at the male. He then stated that he ran to the car, toward Lucy the Elephant. He ran to the car and jumped into the car and that he and this other person then went to New York City.

Q. Did he describe his flight path from the scene of the shooting?

A. Just that he went from there to New York City at that time.

Q. Did he discuss with you what, if anything, he did in New York?

A. Yes, sir. He said that his friend took

the gun and that he went to the bus station in New York. At that time he called the hospital and stated he was Gloria Simonelli's brother and he asked about the condition He was informed at that time that she had died. He then took a bus and ended up in South Carolina.

Q. During the course of the interview, was there any discussion about the fellow that had been with Gloria?

A. There was no discussion aside from what he stated. I didn't ask him for his identity.

Q. Well, what did he say about himself and the fellow that was with Gloria?

A. The fellow that was with Gloria?

Q. Yes.

A. He stated that he believed that the guy was a threat to him.

Q. I don't understand. Can you give us some more information along those lines? What did Rick say?

A. Well, he stated that he fired a shot at the guy that was with Gloria, and he said that he just wanted to get away.

Q. Did he lay blame on anyone for the killing?

A. Yes, sir, he did.
Q. What did he say?
A. Mr. Highlander blamed the prosecutor, the Prosecutor's Office and Gloria for her death.
Q. Did he say how he blamed Gloria for her death?
A. Well, he said that she forced him into it by filing the charges.
Q. Was there any more discussion regarding the restraining order?
A. Not that I can recall.
Q. Okay. Did that essentially conclude the statement?
A. Yes, he did add a few things at the end.
Q. What is it that he added?
A. After he stated that he blamed the prosecutor and Gloria for her death, he stated that he still loved Gloria and he hadn't slept since he shot her.
Q. Okay. And what happened after the statement was completed?
A. That was completed about 3:30 p.m. From there, we were ready to go to the airport to attempt to catch a flight back to New Jersey.
Q. You have told us what Rick said to you in

the Richland County Jail. Can you describe for us now his demeanor during this interview?

A. As I said, he was very conversant. He seemed to want to tell his story. It was very important for him that he tell it, not be interrupted often, and tell it the way he wanted to tell it. He was calm through that story.

Q. What did you do then after the statement was completed?

A. We checked Rick Highlander out of the Richland County Jail, processed out, we then handcuffed him and brought him to the Columbia, South Carolina Airport.

Q. Did you make any stops along the way?

A. From the jail to the airport? No, sir.

Q. Okay. How was Rick on that ride to the airport?

A. Quiet.

Q. Did you have to wait long in the airport?

A. Yes, sir, we did, quite a while.

Q. Was Lieutenant Welsh still with you?

A. Yes, sir.

Q. Tell us what went on at the airport?

A. We had quite a bit of problem getting flights back to New Jersey, problem with the

county Visa card. It was -- it would pay for one ticket and not two others, and it was quite awhile before we got that straightened out. We missed several flights.

Q. What was Rick doing during this period of time?

A. For the majority of the time, he was sitting either with Lieutenant Welsh or me. It was always one of us with Mr. Highlander. He was handcuffed. There was a jacket over the handcuffs so it would not be evident to the general public that he was a prisoner. At one point, we had a hot dog at the a snack bar there, all three of us had a hot dog at the snack bar. We used the facilities, the mens room. Basically, wherever we went, Rick went.

Q. Okay. Were there occasions when, for instance, you would be with Rick and Lietenent Welsh wouldn't?

A. Sure, yes, sir.

Q. And would there also be occasions where Lieutenant Welsh was with Rick and you were not?

A. Yes, sir. Particularly when I was trying to arrange tickets at the ticket counter and calling back to the Major Crimes Squad in

getting assistance for a flight.

Q. Were you ultimately able to get a flight?

A. Yes, sir.

Q. And do you recall what Rick was doing on the plane?

A. He was sitting between -- Lieutenant Welsh had the window seat, Rick was in the middle and I was on the aisle seat, as required by FAA regulations when transporting prisoners.

Q. What conversation, if any, do you recall during the flight back to New Jersey?

A. It was a wide-ranging conversation about a lot of things. In particular, the things I recall are the window washing business, which Rick was a member, and talked about women in general, also talked a little bit about what had happened when he was apprehended.

Q. Okay. Do you remember about what time it was that you arrived back in New Jersey?

A. Approximately 11:00 p.m., I believe we arrived. Well, actually, that would be the Philadelphia Airport. I know we arrived in Margate approximately 12:15 a.m.

Q. What did you do when you got back into New Jersey?

A. When we got back to Margate?

Q. Yes.

A. Okay. When we arrived in Margate, he was brought there for processing, and we ordered some food for all of us, all three of us, and Mr. Highlander was processed.

THE COURT: Mr. Talasnik, we'll pick up tomorrow in Margate.

MR. TALASNIK: Very well.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen, it's been represented to me that this may be the last witness for the State. We'll, of course, know that tomorrow, but it's my present expectation that that may be the case. I'm not sure what our schedule tomorrow will be, but -- or what necessarily follows that in sequence, but I'll keep you advised as I know it. Again, I don't have any particularly good information for you yet about how far we go or when, but when I do, I'll let you know. At this point, I don't know anything about Friday enough to give you any realistic statement as to whether you'll be here or not. So for the moment, plan that

you'll be here Friday, although I may wind up changing that before we get closer to it. Again, just as a reminder, please make sure that you don't have any conversations about anything having to do with the case, nor should you read any accounts or hear any accounts in the media with respect to it, and we should be ready to go first thing in the morning with Mr. Juliano, so please be here at 9:00 ready to go. See you then.

(Jury excused at 4:15).

THE COURT: You have equipment you're going to bring in with respect to S-10?

MR. TALASNIK: Yes, Your Honor.

THE COURT: Okay. You going to have headsets or not going to need them?

MR. TALASNIK: No, we'll use a tape recorder and amplifier, Your Honor.

THE COURT: Okay, you have a transcript marked for identification. I'll want the one that was marked, so have supplies -- copies for anybody else that may need them.

MR. TALASNIK: Yes.

THE COURT: During the playing of the tapes.

MR. TALASNIK: Your Honor, I don't make any request that the jurors have them.

THE COURT: I wasn't inviting one.

MR. TALASNIK: Okay.

THE COURT: I was really referring to copies for you and Mr. Davis, and also, I expect we should have one for the court reporter.

MR. TALASNIK: I'll see to it, Your Honor.

THE COURT: Anything else that we need to discuss?

MR. TALASNIK: Well, Your Honor, I kind of like to know which defense witnesses will be called tomorrow. Your Honor had requested throughout that I keep the defense advised and indicated that you would have the defense recipricate, and I expect to be able to rest by the close of the morning session and would like to know who will be called tomorrow afternoon.

MR. DAVIS: Lieutenant Baake, Judge, Ellenbogen, Judy Abruzzi, Brian Abruzzi. They'll be available in the afternoon. Possibly Haywood's down there also, so --

THE COURT: Steven Haywood. Those four ought to give us a pretty good running start for tomorrow. Is it still your estimate, Mr. Davis, too, you'll be able to rest on Wednesday?

MR. DAVIS: I kind of think so, Judge.

THE COURT: Okay. We will tentatively plan, nobody's locked, but we'll tentatively plan to have the defense rest on Wednesday, and then subject to any rebuttal or anything, we would have closing arguments Thursday morning and then go right into the charge. Play it by ear from there. I will have something for you tomorrow, one way or another. At least I have eleven pages you can look at. I should have more for you tomorrow, so that what you will have is pretty close to, if not a word for word version, of what I propose to charge in the whole charge. I had mentioned, I think earlier, that it was my present inclination to prepare that in a form that would be submissible to the jury. It's still my intention to prepare that. I don't think I said, and I should have, I think, that

I'll submit that in writing to the jury, if it was sort of unanimously agreed that that's what I need. I wouldn't do that without consent, but I will be in a position where it would be able to be done if we wanted to. Anything else?

MR. TALASNIK: No, thank you.

THE COURT: Please be here at quarter to nine so we can touch base with whatever we need to.

(Court adjourned at 4:15)

C E R T I F I C A T E

I, KATHY E. DURAND, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC IN THE STATE OF NEW JERSEY DO CERTIFY THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN BY ME IN THE ABOVE CAPTIONED MATTER.

Kathy E Durand

KATHY E. DURAND, CSR, CM
OFFICIAL COURT REPORTER
LICENSE NO. XI00868

DATE: 10-1-89

A-59-89T4

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

REC'D
APPELLATE DIVISION
JUL 11 1990

STATE OF NEW JERSEY,

COMPLAINANT,

VS.

RICHARD LEE HIGHLANDER,

DEFENDANT.

TRANSCRIPT OF TRIAL

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

AT: ATLANTIC COUNTY COURTHOUSE
MAYS LANDING, NEW JERSEY
ON: TUESDAY, JUNE 20, 1989

B E F O R E:

THE HONORABLE STEVEN P. PERSKIE, JSC

ORDERED BY:

JAMES JUKES, ESQUIRE

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

MURRAY TALASNIK, ESQUIRE
ASSISTANT PROSECUTOR, ATLANTIC COUNTY
ATTORNEY FOR STATE OF NEW JERSEY

NATHAN DAVIS, ESQUIRE
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I N D E X

WITNESS:	D	C	RD	RC
AL JULIANO				
Mr. Talasnik	5			
Mr. Davis				
Mr. Preston				
ROY BAAKE				
Mr. Talasnik		67		
Mr. Davis	61		75	
Mr. Preston				
BRIAN ABRUZZI				
Mr. Talasnik		92		106
Mr. Davis	78		104	
Mr. Preston				
JUDITH ABRUZZI				
Mr. Talasnik		121		
Mr. Davis	109			
Mr. Preston				

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(The following is heard out of the presence of the jury at 9:30).

THE COURT: The record will reflect that this morning I gave counsel an amended first sheet on the proposed verdict form for the first phase of the trial. I already gave counsel the text of what I propose to present to the jury as the charge for the first phase, asked counsel to review all of that material and to be prepared to discuss it with me tomorrow when I -- about when I anticipate the testimonial portion of this phase of the trial will end. In the proposed charge, to which I invite counsel's attention, I have -- well, there is no reason to describe its content specifically for the record here. At the appropriate time, I guess I can always make a copy, for the record, of the document itself, but it is a word by word version of what I intend to charge on every subject. I have invited counsel to address three issues. If there is anything in there that shouldn't be in there, if there is anything that shouldn't, that is, if there is anything in there that is not in there and should be, and if there is anything in

there that should be phrased differently than the way it's phrased. We have the equipment ready, Mr. Talasnik, for playing of S-10?

MR. TALASNIK: Yes, Your Honor.

THE COURT: And where's S-11?

MR. TALASNIK: Your Honor, I have S-11 here. I was, again, going to ask the witness to identify it and authenticate it and then I can present it to the Court.

THE COURT: Okay. Anything else before we begin? The tape runs essentially three half-hour bites?

MR. TALASNIK: The first two ARE half hour. The third side is somewhat less.

THE COURT: Any idea how much less?

MR. TALASNIK: Maybe eighteen minutes, around in there.

(Off the record discussion).

THE COURT: Okay. Jury ready?

MR. TALASNIK: Yes, sir.

THE COURT: Ask them to join us please: Find Mr. Juliano for me, please, and ask him to come back.

(The following is heard before the jury 9:30).

THE COURT: All right, ladies and gentlemen, good morning. As you remember, we interrupted the testimony yesterday afternoon of Mr. Juliano, who may resume the witness stand at this time.

A L J U L I A N O, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: The oath that you took yesterday, sir, continues in effect today. You may be seated.

THE WITNESS: Yes, sir, thank you.

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. And Investigator, I'd like to go back briefly, if I may, to our discussion of the interview of Mr. Highlander in South Carolina. Do you recall testifying about that?

A. Yes, sir, I do.

Q. And you've already identified for us the Miranda warnings form and the signatures contained on it?

A. Yes, sir.

Q. Now, was Lieutenant Welsh present throughout the entire interview process?

A. Yes, sir, he was.
Q. At the conclusion of the interview process, and at some time thereafter, was a report ever made summarizing the interview that had been conducted?
A. Yes, sir, it was.
Q. Did both you and Lieutenant Welsh make reports summarizing the details of that oral interview?
A. No, sir, I did the report.
Q. Why would it be that you have two officers listening to the same interview and only one conducts a report?
A. Well, they're hearing the same information, and in the homicide case, the work is divided up. Lieutenant Welsh had other interviews in this case, other report responsibilities, as did I, too. It was decided at the time that I do the reports of the interviews of Mr. Highlander.
Q. Okay. I want to show you a two page document that has earlier been marked as S-12 for identification, it's two pages of typing, I'd like you to look at it and tell me if you recognize what it is?

(Witness complies).

A. Yes, sir, this is the report I prepared concerning the interviews of Mr. Highlander on May 13th, 1988.

Q. Is that recited in both of those typed pages?

A. Yes, sir, it is.

Q. Are you the one who prepared the report?

A. Yes, sir, I did.

Q. Where did the information come from that is contained in that report?

A. It came from field notes taken at the time of the interview.

Q. The interview with whom?

A. Mr. Highlander.

Q. Now, let me bring you back to where we left off yesterday, and that is with you and Lieutenant Welsh and Mr. Highlander at the Margate Police Department sometime after midnight.

A. Yes, sir.

Q. Why was he taken to Margate at that hour, rather than simply lodged in the County Jail until this next hearing?

A. It's procedure when an arrest is made

that the person is processed, that includes the taking of mug shots and the taking of fingerprints, and because each police department of the State of New Jersey is individualized through code numbers on the cards and photographs, it must be done at the place or municipality where the warrant was issued.

Q. That's why he was taken to Margate as the first stop?

A. That's correct.

Q. Was a determination made to attempt to interview Mr. Highlander again at the Margate Police Department?

A. Yes, sir, it was.

Q. Well, now, it's after midnight, you and Lieutenant Welsh and Mr. Highlander had been up all that day and had flown all that distance. Didn't you think twice about trying to interview him after all of that?

A. We weren't tired, we were, what I would describe as travel weary. Highlander had slept some on the plane, as I recall, but we weren't sleepy tired, and Mr. Highlander looked to be in good shape, he wanted to talk.

Q. What do you mean he wanted to talk?

A. Mr. Highlander was very interested in getting his story across, and I gave him the opportunity and he took it.
Q. How do you know that he was interested in getting, to use your words, his story across?
A. When I asked him if he would do a sworn taped statement, he said yes, he was interested in doing a taped statement, but he wanted to do it on his terms, he wanted to lay the foundation, he wanted to set the background to the incident, and I agreed to that.
Q. Did you determine it appropriate to re-advised Mr. Highlander of his various constitutional rights before he would give such a statement?
A. I certainly did, sir.
Q. I have a document that has earlier been marked as S-8 for identification, I'd like you to look at it and tell me if you recognize what it is?
A. Yes, sir, this is the rights form, the standard rights form entitled Your Rights, from which I read Mr. Highlander his constitutional rights on the 14th of May, 1988 at 1:05 a.m.
Q. Are there signatures on there that you

recognize?
A. Yes, sir, there are.
Q. And whose signatures would they be?
A. Richard Highlander, my signature and the signature of Lieutenant Raymond Welsh of the Margate Police Department.
Q. As with the rights form that you earlier identified, is there anyone caution on there to Mr. Highlander that whatever he says can be used in a court?
A. Yes, sir, there is.
Q. Was there any discussion between you and him about any concerns he might have about what he was about to say being used in court?
A. No.
Q. What was the next thing that was done after Mr. Highlander was re-advised of his rights that early morning?
A. I did what is called a pre-interview.
Q. What is a pre-interview?
A. In a pre-interview we talk again about the statement and about the statement he made earlier, and we go over it and try to pinpoint details and go in for the more exacting details, what happened in the incident, and at this time,

also make the suspect or interviewee feel more comfortable about what's going to be said on tape. I don't want to throw any surprises at them, I want them to know exactly what's going to be on that taped statement.

Q. You would have, therefore, explained to Richard Highlander the kinds of things you were going to ask him about on the tape?

A. Yes, sir, I did.

Q. And did you stick to that plan, that is to say, you didn't ask him anything surprising or unexpected on the tape?

A. No surprises, no, sir.

Q. Were you the one who dictated the format of this taped interview?

A. In what regard?

Q. Well, did you say, for instance, look, I don't want you to volunteer anything, just answer the questions that I ask you and we'll get on, we'll get off?

A. No, this case Mr. Highlander was so willing to talk, that he wanted to do it in a narrative form, he wanted to tell his story, and I wasn't about to say no, you have to do it this way. I believe that the pertinent facts would

be told if he told his story and anything that he didn't tell I would ask about.

Q. Wouldn't it have been more economical to simply turn on the tape, say, did you shoot Gloria, get an answer and that's the end of it?

A. If economics were the prime consideration, I suppose, sir. This is Mr. Highlander's opportunity to tell his story, something that he indicated he wanted to do, and something, as an investigator, that I'm bound to tape.

Q. Tell me the procedure that is followed when you take a tape recorded statement.

Q. We have a taped statement format which guides us when we take a taped statement, a sworn taped statement, and we follow that format. We indicate the date, the time, the place the statement is being taken, who's taking the statement, which investigator, who else may be present in the room, from whom the statement is being taken. We also indicate to the person the statement's being taken from that there is -- do you see the tape recorder in front of you, is this statement being taken with your permission. We also swear the person to tell

the truth, the whole truth and nothing but the truth, and we re-advise of the constitutional rights at that time as well.

Q. I have a one page document that was earlier marked as S-9 for identification. I'd like you to look at it, tell me if you recognize what it is?

A. Yes, sir. This is the taped statement format which I filled out at the time of Mr. Highlander's interview and taped statement in the Margate Police Department on the 14th of May, 1988, beginning at 2:23 a.m.

Q. Is there also an indication on that form when the statement ended?

A. Yes, sir, there's a conclusion time, the last entry on the statement.

Q. And what is that time?

A. 3:54 a.m.

Q. Well, that comes out to about an hour and a half, doesn't it?

A. I believe so.

Q. Did it really take an hour and a half for you to ask Mr. Highlander if he shot Gloria?

A. No, sir.

Q. What was the rest of it?

A. Mr. Highlander explaining his story.
Q. Okay. I'm going to show you two items that have now been marked as S-10-A and S-10-B for identification. I'd like you to look at them and tell me if you recognize what they are?
A. Yes, sir, these are the two cassette tapes used to take a sworn taped statement from Mr. Highlander on the 14th of May, 1988.
Q. Are there any markings on those two tapes that help you recognize what they are?
A. Yes, sir. My handwriting in the -- on the cover piece of each tape.
Q. Go on.
A. Indicating Mr. Highlander's name, the date, subject matter, what case was involved, and by whom the statement was taken. There also -- the tabs are punched out, which we do in the back, to prevent accidental erasure.
Q. After those tapes are made, what are done with them?
A. They are transported back to the Major Crimes Squad where the secretaries transpose them on to a paper and transcripts, and that transcript is checked by the investigator for accuracy, and then the tapes and the transcript

-- transcript is returned to the file, the tapes are given back to the secretaries and the tapes are then locked in a safe keeping closet, taped statements.

Q. I'm going to show you now a series of documents, numbering -- well, it's numbers one through thirty-one, although there are no numbers on the original. I want you who look at S-11, which is what is marked, tell me if you recognize what that is?

A. Yes. This is the taped statement transcript of the interview of Mr. Richard Highlander taken on the 14th of May, 1988.

Q. Have you had occasion to go through that transcript page for page?

A. Yes, sir, I have.

Q. And have you had occasion to compare it with the tapes that you've identified for us?

A. Yes, sir, I have.

Q. Does the transcription appear to accurately reflect the information that's contained on the tapes?

A. Yes, sir, it does.

Q. Do the tapes appear to be, based on your listening to them, in the same condition they

Q. Did you ever turn the tape recorder off?
A. I turned it off to change tapes. It ran out once and I believe I turned it off a second time in order to put a fresh tape in, or a fresh side to a tape.
Q. Other than as was necessary to either turn a tape over or insert a new tape, was the tape recorder ever turned off during the entire time that Mr. Highlander told you his story?
A. No, sir, it was not.
Q. Suppose Mr. Highlander started to talk about things that didn't really relate to the shooting, what did you do?
A. If he began talking about things non-related to the shooting, I wouldn't turn the tape recorder off. I would allow it to run and try to redirect Mr. Highlander to the subject at hand.
Q. Okay, was there ever a time when he was stopped so that you could bring him back to the subject at hand?
A. Several attempts were made to turn his thoughts more toward the incident at hand, but he continued to speak, and that was fine.
Q. Okay.

MR. TALASNIK: Your Honor, at this time, I'd like to begin playing for the jury S-10-A.

THE COURT: All right. Ladies and gentlemen, we're going to have these tapes played for you. As you've already heard, they total approximately an hour and a half. My understanding is that there are three sides to the tapes, each one being approximately a half hour, give or take a few minutes, apparently. We will probably take a recess at the first half hour, and maybe also at the second. We'll see how it goes. I caution you, from past experience, that listening to tapes is, in a sense, a little bit tougher than listening to the testimony of a live witness. When there is a live witness here you can watch the witness while you're listening and it helps to absorb your attention. Sometimes listening to tapes, particularly for lengthy periods of time, becomes a little bit tougher, so I simply, without in any way suggesting that this evidence is any more or less important, you'll make your own decisions about what's important, I do caution you that you'll need to pay careful

attention as the tape is running. Unless there is some -- something that I do not now anticipate, once we start the tape, we will just let it run until the first side of the tape runs out.

(Begin playing tape at 9:45).

(Interrupt playing tape at 9:47).

THE COURT: You're going to have difficulty hearing Mr. Highlander, although I'm not having any difficult hearing Mr. Juliano.

(Continue playing tape at 9:48).

(Stop playing tape at 10:16).

THE COURT: That's the end of the first side of the first tape?

BY MR. TALASNIK:

Q. Investigator, is that where the end of the first -- is that when the first side of the tape ended?

A. Yes, sir, it is.

Q. And would you describe exactly what you did as that first side ended?

A. I pushed the ejection button and turned the tape upside down and put it back in. Because there is no leader tape, it begins to

record immediately again.

Q. Was there any conversation at all among any of the three of you, that is to say, yourself, Lieutenant Welsh or Mr. Highlander, between the time the first side ran out and the time the second side was turned on?

A. No, sir.

MR. TALASNIK: Your Honor, at this point I'm turning the tape over and would begin playing side two of tape one.

THE COURT: All right. Well, why don't you hold that for just a minute. We'll take just a brief minute or two for a recess, splash some water on your face or whatever, and we'll be right back to pick up with the next side of the tape.

(The following is heard out of the presence of the jury at 10:17).

THE COURT: Frankly, I took the recess here mostly because I had told the jury that I would. My present thinking, depending on how the next half hour goes, is that once we come back, we'll play the second and third sides without another break. Take a brief recess, then we will resume.

(Whereupon Court takes a brief recess at 10:17).

(The following is heard before the jury at 10:32).

THE COURT: All right, Mr. Talasnik, you may start with the next tape.

(Begin playing tape at 10:35).

(Interrupt playing tape at 10:39)

BY MR. TALASNIK:

Q. Investigator Juliano, I hear a different voice now than we have been hearing, that is to say, different than yours, apparently different than Mr. Highlander. Who was it that asked that question?

A. That was Lieutenant Raymond Welsh of the Margate Police Department.

Q. And was he physically present throughout the process?

A. Yes.

(Continue playing tape at 10:39).

(Stop playing tape at 11:05)

BY MR. TALASNIK:

Q. Investigator Juliano, what is it that we heard at the tail end of that tape?

A. That's the conclusion of that side of the

tape.

Q. What did you do when that side of the tape ran out?

A. I had a second tape, which I put in the machine, back recording.

Q. Between the time that you removed the first tape and the time that you placed the second tape in, was there any conversation among any of the three people in the room?

A. No, sir.

Q. Now, I note that the first tape that was identified as S-10-A appears to be physically different than the second tape marked S-10-B. Can you explain that?

A. Yes, sir. The first tape is a tape produced exclusively for the Atlantic County Prosecutor's Office at the time, which contained labels on both sides indicating it was Atlantic County Prosecutor's tape. The second tape was given to me by Lieutenant Welsh, and it was a tape made by the Harris Corporation, that also makes cassette tapes. It was a fresh -- both were fresh tapes when I opened them. Those are the tapes that he uses, the Harris tapes.

Q. Now, Investigator Juliano, we've heard

two sides of a complete tape and you're just now getting to the events surrounding the death of Gloria Simonelli?

A. Yes, sir.

Q. Why was that?

A. Mr. Highlander was laying the foundation, as he put it, for this. He felt comfortable telling this story his way, and I wasn't about to stop him from telling the story his way.

MR. TALASNIK: Your Honor, at this point, I'd like to begin playing tape two, side one.

THE COURT: You may proceed.

(Begin playing tape at 11:06).

(Conclude playing tape at 11:39).

BY MR. TALASNIK:

Q. Investigator Juliano, after that portion of the tape, is there anything else contained on the balance of side three or any of side four?

A. No, sir, that was the end of the statement.

Q. Was there any further conversation with Mr. Highlander that evening?

A. Yes, there was, about getting ready to go be entered in the County Jail.

Q. And would you describe to the jury what happened with Mr. Highlander after he was permitted to give this statement?
A. He was prepared to go to the County Jail, recuffed and transported by Lieutenant Welsh and I to the County Jail.
Q. And did that conclude your activities with Mr. Highlander that day?
A. Yes, sir, it did.
MR. TALASNIK: Thank you. I have no further questions of the witness.
THE COURT: Mr. Davis.
MR. DAVIS: I have no questions, Your Honor.
THE COURT: You may step down, Investigator. Thank you very much.
THE WITNESS: Thank you, sir.
THE COURT: Mr. Talasnik.
MR. TALASNIK: Your Honor, subject to moving certain items previously marked for identification into evidence, the State would rest.
THE COURT: Ladies and gentlemen, we're going to take a brief recess at this point while I consider what Mr. Talasnik has in mind.

What will happen now is that I will hear from him as to what items and exhibits he wishes me to receive into evidence, and I will make the determination of what items I will receive. I'll do that now and take a few minutes recess while I do, and then before lunch, we'll have you back and I'll tell you what's happening next. Again, please remember not to have any discussions during any part of your recess about the case.

(The following is heard out of the presence of the jury at 11:40).

THE COURT: What do you proffer, Mr. Talasnik?

MR. TALASNIK: I have the physical evidence secured downstairs in the evidence locker. If I could have five minutes to bring it up and then I could more intelligently go through it with the Court. For instance, the photographs, I need to address one at a time. I know I had some identified and some not.

THE COURT: I understand. All right, I want to --

MR. TALASNIK: I can go through some of it now. Let's do some of it now.

THE COURT: Maybe you can ask somebody to get -- to help in bringing the others up. I really want to move. Why don't you go through now what you can go through now.

MR. TALASNIK: S-3 is the is interrogation rights form prepared by the F.B.I. officers and signed by the defendant.

THE COURT: Mr. Davis.

MR. DAVIS: No objection.

THE COURT: S-3 will be received.

(S-3, Interrogation rights form, F.B.I., marked in evidence).

THE COURT: Do you have it here?

MR. TALASNIK: Yes, Your Honor. Let's just give each item to the sheriff and we'll hold it here, and they'll all be marked.

MR. TALASNIK: S-5 is the three page handwritten statements signed by the defendant that was identified by the F.B.I. officers.

MR. DAVIS: No objection.

(S-5, 3 page handwritten statement, marked in evidence).

MR. TALASNIK: S-7 is the Miranda rights form executed on the 13th of May in the

afternoon identified by Officers Welsh and Juliano.

MR. DAVIS: No objection.

THE COURT: Received.

(S-7, Miranda form, May 13, marked in evidence).

MR. TALASNIK; S-8 is the second Miranda form executed the following morning and identified by the same officers.

MR. DAVIS: No objection.

THE COURT: Received.

(S-8, Miranda form, May 14, marked in evidence).

THE COURT: Nine is the taped statement format form identified by the officer.

MR. DAVIS: No objection.

THE COURT: Be received.

(S-9, Taped statement format, marked in evidence).

MR. TALASNIK: S-10-A and B are the two cassette tapes that have been played for the jury.

MR. DAVIS: No objection.

THE COURT: Received.

(S-10-A and S-10-B, Cassette tapes

of statement marked in evidence).

MR. TALASNIK: S-13 is the brown leather jacket that was identified by various witnesses as having belonged to the victim and which was also handled by Doctor Jason, who described and identified certain holes in the jacket.

THE COURT: Mr. Davis.

MR. DAVIS: No objection.

THE COURT: Be received.

(S-13, Leather jacket marked in evidence).

MR. TALASNIK: S-14 is the car rental form that was identified by the representative of Ruffu Ford.

MR. DAVIS: No objection.

(S-14, Car rental form from Ruffu Ford marked in evidence).

THE COURT: S-15, the receipts from Pier Four Motel identified by the clerk who was working that day.

MR. DAVIS: No objection.

THE COURT: Received.

(S-15, Receipts from Pier Four Motel marked in evidence).

MR. TALASNIK: I don't really --
THE COURT: Skip the photographs.
MR. TALASNIK: If I get to them. S-36 is a certified copy of the domestic violence order that I offer as a self authenticating documents.
THE COURT: Mr. Davis.
MR. DAVIS: No objection.
THE COURT: Recieved.
(S-36, Domestic violence order marked in evidence)
MR. TALASNIK: S-37 is a certified copy of the aggravated assault terroristic threats document.
THE COURT: Mr. Davis.
MR. DAVIS: None, Your Honor.
THE COURT: Received.
(S-37, Aggravated assault, terroristic threats document marked in evidence).
MR. TALASNIK: S-38 is the manilla envelope.
THE COURT: Containing bullets.
MR. TALASNIK: Yes.
MR. DAVIS: I'd like to see what's

on the envelope, but the contents, no objection.

THE COURT: Marked.

(S-38, Manilla envelope containing bullets marked in evidence).

THE COURT: Go ahead.

MR. TALASNIK: S-40, S-40 and S-41 are the items that were removed from the victim's pockets.

THE COURT: Parking permit and the copy of the domestic violence. Mr. Davis.

MR. DAVIS: No objection.

THE COURT: Be received.

(S-40, Parking permit; S-41, domestic violence order marked in evidence).

THE COURT: S-42 was an envelope removed from the post office box testified to by Detective Teasenfitz.

MR. DAVIS: Objection to that. I don't see the materiality. It's his post office box. I don't even know the person who signed at the Pier Four Motel, signed in with the name Richard Simonelli.

MR. TALASNIK: The letter that was recovered is addressed to Richard Simonelli.

State has a burden of proof on issues including identify, and for that reason, I suggest that it's relevant.

MR. DAVIS: We'll withdraw, Judge.

THE COURT: I'll receive it.

(S-42, Envelope marked in evidence).

MR. TALASNIK: S-43 is the packet, trip ticket information from the Fairmont Hotel that was also recovered by Detective Teasenfitz in the search of Miss Simonelli's apartment.

MR. DAVIS: No objection.

THE COURT: All right.

(S-43, Trip ticket information packet marked in evidence).

MR. TALASNIK: The original of the assault complaint that was signed the day after the March 15th incident.

MR. DAVIS: No objection.

THE COURT: Received.

(S-44, Original of assault complaint marked in evidence).

MR. TALASNIK: S-45 and S-46 and two photographs of the victim that were identified by the victim's father who took the

photographs.

THE COURT: Mr. Davis.

MR. DAVIS: We'll object to those two, Judge.

THE COURT: Okay, I'll hold those until we get all the photographs here.

THE COURT: S-47, the documentary evidence relating to the purchase of the 1988 Toyota Camery.

MR. DAVIS: No objection to that, Judge.

THE COURT: No, wait a minute. I have that as car rental documents.

MR. TALASNIK: Yes, well, the car was leased.

THE COURT: Okay.

MR. TALASNIK: And that may be why the reference is to rental.

THE COURT: Okay, all right, I'll receive that as S-47.

(S-47, car rental documents marked in evidence).

MR. TALASNIK: S-49 and S-50 are other documents pertaining to the leasing of the car on the date of the homicide that were

identified by Ruffu Ford.

THE COURT: Ruffu people. Mr. Davis.

MR. DAVIS: No objection.

THE COURT: Received.

(S-49 and S-50, Documents pertaining to lease of car marked in evidence).

THE COURT: And that's it, other than the photographs of the scene and autopsy photographs that the State would proffer, and the many photographs of the victim following the assault that the State would proffer, and those items are on their way up. Okay. That would be the following items. Well, there was evidence presented about S-16 through S-26, and also S-31 through S-34, and we have the ballistics envelopes, S-38, and two photographs, S-45 and forty-six and also fifty-two.

MR. TALASNIK: Well, fifty-two is not being --

THE COURT: Your not proffering that?

MR. TALASNIK: Will, I -- because I don't have the picture, I forget which one

that is.

THE COURT: This is the one with the bag on the ground.

MR. TALASNIK: Again, I want --

THE COURT: You look at all the pictures when you get them up here. We'll take a brief recess. What I would like to do before the luncheon recess is, I'd like to finish up the questions of the exhibits, bring the jury back in, advise them of what exhibits are in evidence, and then recess them for lunch and then we'll proceed. Mr. Davis, any application?

MR. DAVIS: We're going -- I'm going to make the State vs. Reyes application.

THE COURT: Okay.

MR. DAVIS: I can make it now.

THE COURT: I'll hear you now.

MR. DAVIS: Your Honor, it's basically pro forma. We would move to dismiss the indictment based on the case of State vs. Reyes.

THE COURT: All right. For the record, this application requires me to test against the standard established in Sate vs. Reyes the legal sufficiency of the evidence

adduced by the State. I make and imply no findings of credibility, but would merely determine whether, if the jury chooses to believe the evidence presented by the State, that a reasonable inference may be drawn from that evidence, there is sufficient evidence presented so that a reasonable jury could find beyond a reasonable doubt the violations of the statute.

Turning to each of the relevant counts of the indictment, the first count charges two different versions of the crime of murder, purposely or knowingly causing the death or purposely or knowingly causing serious bodily injury resulting in death by his own conduct. I'm satisfied that the evidence here, if afforded credibility by the jury and if the jury chooses to draw those inference that may be drawn, could be satisfied that the defendant personally and by his own conduct shot the defendant (sic), causing her to die; further, that he did so knowingly or purposely, and that therefore, the elements of that offense, in either of its variations, are established.

I am further satisfied that in the

second count the defendant is alleged to have possessed a firearm with a purpose to use it unlawfully against the purpose of Gloria Simonelli. I am satisfied that the State has adduced evidence of the existence of such a firearm, that he had it and that, in fact, by his statements and his conduct, the jury could infer it was his purpose to use it against her personally. I'm, therefore, satisfied that the motion as to the second count must be denied.

In the third count the defendant is charged with purposely or knowingly disobeying a judicial order entered in a domestic violence matter. I'm satisfied that the State has here established, if the jury accepts it, that there was such an order contained certaining restrictions, among others, that he would have no contact with her, that he knew of the existence in terms of the order and that he puropsely and knowingly violated the provisions of that order on April 25. I'm, therefore, satisfied that the motion as to that count must be denied.

The fourth count that charges an attempted murder of Patrick Sullivan, this

requires the State to establish that the defendant took a substantial step designed and planned to culminate in the killing of Patrick Sullivan and that he did so purposely. I am satisfied that the jury could make the necessary inference as to his purpose from his conduct, and that the evidence may allow the jury to conclude that the defendant fired a gun at Patrick Sullivan. I'm, therefore, satisfied that the elements of that offense are, against this standard, established, and the motion as to the fourth count must be denied.

With respect to the fifth count charges, as amended, serious aggravated assault on Patrick Sullivan in an attempt to cause serious bodily injury. Again, I'm satisfied that the evidence would allow the jury to conclude that the defendant fired a gun at Patrick Sullivan. The jury may conclude from that, in my view, either that he -- his purpose was to kill Patrick Sullivan, which would justify the attempted murder, or his purpose was to cause serious bodily injury. The jury may, therefore, I'm satisfied, find that aggravated assault, as well, on this evidence, and

therefore, the motion must be denied.

A sixth count charges an attempt to cause bodily injury with a handgun, another version of aggravated assault, and for the same reasons, I'm satisfied that the evidence here is legally sufficient to permit the jury to reach that conclusion and accordingly, the motion must be denied.

Seventh count charges possession of a handgun without a permit. I'm satisfied that the jury could here conclude that there was, in fact, a handgun, that the defendant, in fact, possessed it. I draw attention, as the statute provides, to the provisions of 2C:39-2(b) which provides that the jury may presume the absence of such a permit, absent the establishment to the contrary. Accordingly, I'm satisfied that all of the elements of that charge, likewise, have been satisfied, if the jury finds the evidence presented by the State to be credible and believable and chooses to draw the appropriate inference, and accordingly, deny the motion as to that count as well.

What have you recieved, Mr. Talasnik? First start with the ballistics

envelope.

MR. TALASNIK: S-38, I'll show that to Mr. Davis.

THE COURT: All right. Check also the interior envelopes, Mr. Davis.

MR. TALASNIK: I can turn over to the sheriff S-36 and S-37 that the Court has already admitted. Also S-43, S-14, S-49 and S-50, that really could perhaps be stapled together. I'll show them to Mr. Davis.

THE COURT: No, leave them apart as long as --

MR. TALASNIK: Very well.

THE COURT: They were marked separately.

MR. TALASNIK: S-47 is shells. S-15 had some fragments.

THE COURT: The jacket is thirteen.

MR. TALASNIK: S-13. S-13. I have also S-40 and S-41, S-42 and S-43. And I believe that is everything, with the exception of the photographs.

THE COURT: Maybe S-44, did you turn that one over, the assault complaint? Yes, we have it. Mr. Davis, have you had a chance to

look at the ballistics? That would be S-38.

MR. DAVIS: Yes, Judge, we have an objection. Judge, the objection would be based on certain statements indicated on the front of those documents.

THE COURT: Let me see them, please. The interior or the outside?

MR. DAVIS: The interior, Judge.

THE COURT: What's your objection?

MR. DAVIS: Well, Judge, one of them, I think it's number four, indicates led fragments taken from the ground. I don't know if there was any testimony with regard to that, and that would be objectionable. The other was, indicates where they were taken from and I don't think that's necessary, Judge.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, there was testimony as to the origin of all of the exhibits that were submitted.

THE COURT: There certainly was as to six and seven, no question of that.

MR. TALASNIK: If the objection is satisfied by somehow deleting something on the jacket, I don't have a problem with that, but I

do recall that Mr. Harbison indicated the removal of the lead fragments from various portions of the wood that --

THE COURT: He did, but I don't remember any testimony that would, for example, specifically link that which is in envelope three to where it says on the outside of that envelope it specifically came from. My recollection is he said that all of these exhibits came from the wall or parts of the wall or the deck or -- and the like, but I don't remember that he specifically identified any particular one as coming from any particular place.

MR. PRESTON: Judge, Judge, may I offer a suggestion, that perhaps if the items were placed in fresh envelopes with the same identification, be marked with Court identification markings and without the description.

THE COURT: My suggestion was going to be to leave them in the exact envelopes that they were in and just have the relatively minor wording that's objectionable here rendered illegible.

MR. PRESTON: When you start making obvious obliterations and submit them to the jury, it creates problems. I would prefer to have something clean --

THE COURT: Well, I understand.

MR. PRESTON: -- Viewed by the jury.

THE COURT: But to me, the jury is entitled to see the rest of the envelopes which contain as was testified.

MR. PRESTON: I have no objection.

THE COURT: With the markings and all of rest of that.

MR. PRESTON: I have no objection to the number markings and all the identification markings going in.

THE COURT: I'm going to make the least change to these exhibits that is necessary to meet the objection, which I think is well taken. I'm going to receive the exhibits. As to six and seven, they don't need to be changed. As to the outside envelope, it doesn't need to be changed. As to the inside envelopes, one through four, I'm going to leave all of the markings as they presently exist except for on

number one, it says, lead fragment from on the tall front deck. Number two, molding right side. Number three says, fragment from wall entrance to passage under deck, left side. And number four says, lead fragments from ground, approximate center of passage under deck. I will direct the clerk, under my supervision, to get a black magic marker or something of that nature, and obliterate the language I have just read, or I'll do it.

She's giving it to me, and therefore, I'll do it. Anybody else care to be heard?

MR. TALASNIK: Not as to that, Judge.

THE COURT: As modified.

MR. DAVIS: No, Judge.

THE COURT: As modified those exhibits will be received. Mr. Davis, you may, of course, inspect as I'm doing it.

MR. PRESTON: Judge, I can clearly read lead fragment from front wall under deck, right side.

THE COURT: Well then I'll have to do it better.

MR. PRESTON: The problem, Judge, is that the medium which is being used to obliterate is.not sufficient to destroy the medium which was used to create the original writing.

THE COURT: Well, then I do it better or different. Certainly the end result is going to be that you're not going to be able to read it. Try the last two. Examine them all. Mr. Davis.

MR. DAVIS: Yes, Judge.

THE COURT: Can you read them?

MR. DAVIS: No, I can't read them, Judge.

THE COURT: Neither can I. Okay, that's 38.

(S-38, Manila envelope containing lead fragments marked in evidence).

THE COURT: What else, if anything, besides the pictures. Let me see, everything else is pictures, correct? All right, let's take the two first, forty-five and forty-six, which are the photograhs testified that the father took. Exhibit them, please, to counsel.

MR. DAVIS: Judge, the only thing

that we'll object with regard to --

THE COURT: These are --

MR. DAVIS: I'm sorry, I'm looking on the wrong side.

THE COURT: S-45 and forty-six.

MR. DAVIS: S-45 and forty-six,, Judge, is that during the testimony of Mr. Simonelli who indicated that he took these pictures, Judge, he indicated from the witness stand that the pictures were not reflective of the true color of the alleged injuries which are contained on the pictures. Therefore, Judge, we'd object because the pictures do not accurately represent the condition of Gloria Simonelli at the time the pictures were taken.

THE COURT: I think he testified that they were more black and blue than was indicated on these pictures. In any event, I'm satisfied that the pictures may be received, as any difference between that which they purport to show and that which he testified is not prejudicial to the defense.

(S-45 and S-46, Photos of Gloria Simonelli taken by Mr. Simonelli marked in evidence).

MR. TALASNIK: Your Honor, there are eleven scene photographs marked S-16 through S-26.

THE COURT: And one more S-52.

MR. TALASNIK: I'm not offering that one.

THE COURT: Okay.

MR. TALASNIK: Just the eleven that conclude with S-26.

THE COURT: Mr. Davis.

MR. DAVIS: No objection to those, Judge.

THE COURT: All right. They are all received.

(S-16 through S-26, Photographs of scene marked in evidence).

MR. TALASNIK: Your Honor --

THE COURT: Wait just a second, please. Hand them over to the reporter, please. I think that leaves us only the autopsy photographs, is that right?

MR. TALASNIK: Yes, Your Honor, of which four were identified.

THE COURT: Thirty-one through thirty-four.

MR. TALASNIK: Are offered.

THE COURT: Mr. Davis, take a look.

MR. DAVIS: Mr. Preston's going to argue this one, Judge.

MR. PRESTON: Let me see. Number twenty, no objection.

THE COURT: No, S-31, thirty-two, thirty-three, thirty-four are the only ones you should have.

MR. PRESTON: Excuse me, this one is thirty-two.

THE COURT: I'll receive it; thirty-one, no objection.

THE COURT: Be received.

(S-31, Autopsy photo marked in evidence).

MR. PRESTON: Thirty-four and thirty-three, however, we object to. The problem, they contain depiction of rather prejudicial marks on the body which are of no relevance to the homicide. There are stitch marks across the lower breasts over the chest cavity which were evidently performed with regard to either emergency attempt to revive

Miss Simonelli, or with regard to the autopsy, and they have no relevance to the State's case, and do make -- tend to make the picture prejudicial. Additionally, there is a probe inserted threw the wounds in the arm and into the chest. The probe and its function were testified to by the doctor. The pictures have minimal probative value, given the doctor's testimony, as compared to the rather grotesque and repulsive impact that they would have on the jury. Further, they are -- there are various medical devices inserted into the body, at least with regard to picture number thirty-four, that have no relevance to the State's case at all. And these also aggravate the prejudicial nature of the photograph. They are, while not the very bloodiest pictures that I've ever seen, certainly do have an excessive amount of blood on them. Overall, the photographs, I'd suggest to the Court, and strenuously argue, is of minimum probative value, given the doctor's testimony, and certainly of great prejudicial value. That's in regards to advancing the State's case. In order of prejudice, I'd certainly say that photograph number thirty-four

is, which I present to the Court now --

THE COURT: The more --

MR. PRESTON: The most prejudicial.

THE COURT: All right, give me both.

MR. PRESTON: The other photograph clearly shows a great deal of the wound. This is photograph thirty-three that is visible in the -- in the first photograph I showed the Court. I would suggest to the Court that both are objectionable, however, if the Court is inclined to let any in, I'd suggest that the photograph that hides the wounds on the elbow and merely displays the probe should be the only one that's allowed in, but we object to that one, nevertheless.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, I'd like to rely, if I may, on the Rule 4 evaluation that is discussed in State vs. Sanchez. It's an Appellate Division decision that begins in volume 224 at page 231, it's a March 30th, 1988 decision of the Appellate Division, and it is an appeal of a murder conviction. Among its grounds raised, among the assertions that the

prejudicial error was committed by the admission by the trial Judge of certain autopsy photographs. In that case, there was one gunshot wound fired in the direction of the victim, and it struck the victim's hand, face, neck and principally the chest, and autopsy photographs were admitted at that trial which displayed the injuries that were inflicted to those areas, focusing upon the chest. The analysis in that opinion is classic Rule 4 analysis, but it -- it includes certain specific points.

THE COURT: Mr. Talasnik, if you had to choose between the two pictures, which one do you want?

MR. TALASNIK: If I could see the numbers, I believe it -- it's the one that does not show the victim's face, which I believe is S-33.

THE COURT: Is the one you would prefer?

MR. TALASNIK: Yes, Your Honor. I recognize that it has less, it exposes less of the injury, it -- there clearly is less blood, the victim's face is concealed.

THE COURT: You can give me thirty-three and keep --

MR. PRESTON: Judge, if Mr. Talasnik wants to submit only thirty-three --

THE COURT: I don't need it. I'm going to make a ruling, Mr. Preston.

MR. PRESTON: Thank you.

THE COURT: This is a Rule 4 issue. I am satisfied that rule requires me to examine the probative value of the pictures, to examine them for any undue prejudice, and to weigh whether the probative value is substantially outweighed by the capacity for undue prejudice. There's a great deal of case law with respect to this subject. I'm reminded of a remark in one of the more recent opinions, not in this context, something to the effect that a murder really is not a minuet. I understand that it's not a minuet and I understand that in a murder trial that autopsy pictures can have substantial probative value. Here I'm satisfied that the probative value of the two of which we're discussing -- that we are discussing, has to do with the line of fire, has to do with the correlation, as testified by the

doctor, between the wounds in the jacket and the body, had to do with the correlation of the wounds between the arm and the torso, all of which have probative value as they relate to the circumstances of the shooting. Therefore, there is some definite probative value even with respect to both of the pictures, to the extent that the arm is placed in a position where the doctor testified he believed it was when the shot was fired. There are generically some gruesome aspects about both pictures. They both show -- well, the pictures are here and I don't need to describe them. Suffice to it say that either picture has quantitatively a capacity for prejudice in that they're gruesome. That is not the measure before me. The question is whether there is a capacity for undue prejudice and whether, in fact, that outweighs the probative value. I think that picture thirty-three is admissible. I think that it is necessary to establish the -- or helpful, or rather appropriate to establish the line of fire, if you will, and the correlation of the wounds, and that its capacity for undue prejudice is relatively slight. Picture thirty-four is, I

think, in a different category. S-34, while it shows the same thing, it does show it at a different angle and with substantially more capacity for prejudice, particularly as it exhibits the decedent's face and many other aspects that are not present in picture thirty-three. Accordingly, I am satisfied that as to S-34, the capacity for undue prejudice is substantial, and in fact, outweighs the probative value, provided by what is otherwise included in S-33, and is, therefore, before the jury. Therefore, the proffer as to S-33 is admitted, S-34 is denied.

(S-33, Autopsy photo marked in evidence).

THE COURT: Anything further before we bring the jury in? It is my intention to tell the jury all of the exhibits that have been received and to indicate to them that they will be available for their examination at the end of the trial. It is further my intention, Mr. Davis, to advise the jury that we will commence with presentation on behalf of the defense after lunch.

MR. DAVIS: Okay.

THE COURT: Sheriff, if you will. Mr. Talasnik, you will please be good enough to leave the equipment with the clerk for the duration, as she will need it to send into the jury room for the tapes.

MR. TALASNIK: Your Honor, there is a built-in microphone, which Your Honor heard during the Rule 8 hearing. I would trust that that would be sufficient without the amplifier.

THE COURT: Probably will. I'll remind the jury right now, so that I don't forget and I'll try to remind them at the end, if they have any problem with that they should let me know, but I think that the --

MR. PRESTON: If I recall, Judge, we used the same device in another trial and that was the way we sent it into the jury.

THE COURT: Without the amplifier.

MR. PRESTON: Without the amplifier.

THE COURT: Wasn't that Suero?

MR. PRESTON: Yes. I think that proved satisfactory.

THE COURT: It did, at least I thought it did, so I'll go with it here.

(The following is heard before the jury at 12:15).

THE COURT: All right, ladies and gentlemen, the State has moved into evidence, and I have received into evidence, the items that I'm about to describe to you. Each of these items, now that they are in evidence in the case, will be made available to you for your inspection during the course of your deliberations at the end of the trial, and you will, therefore, have them and be able to examine them and you will attach such significance to each of them, or all of them together, as you think is appropriate after you've heard everything that you need to hear and decide in the case.

Now, we have the following items, and I'll recite them for you in the sequence in which they are numbered, just for convenience. S-3, which was an executed waiver of rights form, I believe that one was the one that was testified that the F.B.I. took in South Carolina on May 12; S-5 is a statement of three pages that also, I believe, was testified came from the F.B.I. office on May 12th; S-7 is another

waiver of rights form, this one is May 13th, and I believe was the one that was testified by the Margate Police that was taken at the County Jail in South Carolina; S-8 is another waiver of rights form, this is the one that was testified to yesterday or today by Mr. Juliano as having been executed at the Margate Police Station early in the morning of May 14; S-9 is the document that Mr. Juliano testified this morning, the tape format that he prepared in anticipation of taking the taped statement; S-10-A and S-10-B are the two tape cassettes that you heard played this morning, and we will send them in the jury room with you along with a playback machine, whatever you want to call it. By the way, on that point, today when you heard it you heard it through an amplifier. We think, on the basis of our past experience in other cases, that you won't need the amplifier in the jury room, that the simple machine will be enough. In the event that you choose to play the tapes in the jury room, and in the event that there is some problem with hearing it, you'll let me know and we'll get you the amplifier.

S-13 is the brown leather jacket that was testified about; S-14 are documents relating to the rental of an automobile on April 25th from Ruffu Ford; S-15 are receipts from the Pier Four Motel in Somers Point from April 25th; S-16 through S-26 inclusive are photographs that were taken by the police or the Sheriff's Office at the scene, at the Greenhouse after the police arrived; S-31, S-32 and S-33 are photographs that were taken by the Sheriff's Office at the autopsy and were testified to by Doctor Jason; S-36 is a certified copy of documents from the Superior Court Family Part. This document includes, I believe, a complaint and a final domestic violence restraining order issued by the Superior Court on the date that's issued. I believe the testimony was somewhere near the end of March, but your recollection with the documents will govern.

S-37 is a certified copy of an indictment, indictment 88-04-834B, which is the indictment that charged the defendant here, Mr. Highlander, with certain offenses against Ms. Simonelli, and that indictment, again, will have a date on it. My recollection is it was in

early April, but your recollection and the document itself will govern the date.

S-38 is a manila envelope containing six smaller envelopes, each of which has some bullet or lead fragments that you heard testimony about from the ballistics witness and from the Sheriff's Office, and from the doctor; S-40 and S-41 are documents that were testified as having been in the clothing of Miss Simonelli on the night that she died, including her copy, or a copy of the domestic violence orders, and you'll find that those are similar copies of the certified copies that I just referred to, as well as a parking permit from her job, I think; S-42 is an envelope addressed to Rick Simonelli about which you heard some testimony; S-43 are some documents relating to a trip, I believe to California in November of 1987, that I think were testified as having been recovered from her apartment; S-44 is the copy of the original assault complaint filed by Miss Simonelli against Mr. Highlander on March 16, 1988 in Margate; S-45 and S-46 are photographs that were taken of Miss Simonelli at or about the time of the domestic violence hearings, and I believe

the testimony was that her father took those photographs; S-47 are documents relating to the acquisition of the victim's car, Miss Simonelli's car, including a check, if I recall, on a lease agreement and the like; S-49 and S-50 are documents that were testified to by the representative of Ruffu Ford and are related to the rental of the vehicle from Ruffu Ford on April 25, 1988.

Those are the exhibits that are, at this point, admitted into evidence. There may or may not be other exhibits before the trial is ended that are received into evidence. It is for you to decide after you've had the opportunity to examine all of the exhibits, which ones are helpful and which ones are important and which ones are not particularly helpful and not particularly important, that's up to you to decide after you've heard everything that there is to hear.

With the admission of those exhibits and documents into evidence, the State has rested. That means that the State has completed its presentation of evidence in support of the charges that are brought in the

indictment against the defendant. In any criminal trial, a defendant has the right, but never the obligation, to produce any evidence to the jury that he chooses to produce in connection with the charges. We will immediately, after the luncheon recess, commence right away with the presentation of evidence that the defendant desires to present. Again, during the luncheon recess, please do not have any discussions about anything having to do with the case, and we'll see you right after lunch at 1:30. I will try to give you, by the end of the day, some kind of schedule, as best as I can determine it, for the balance of the week.

(Whereupon Court takes luncheon recess at 12:25)

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

(Whereupon the following is heard in open court at 2:10).

THE COURT: All right. As you remember, before lunch, the State had rested. We turn then to the opportunity for the defense to present evidence. Mr. Davis.

MR. DAVIS: Yes.

R O Y B A A K E, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Now Mr. Baake, by whom are you employed?

A. City of Margate, Margate, New Jersey, sir.

Q. And in what capacity, sir?

A. Lieutenant of Police.

Q. And how long have you been so employed as a police officer?

A. Thirty years, sir.

Q. Okay. Now, I'm directing your attention to March of 1988. Do you recall seeing a Richard Highlander that day?

THE COURT: I'm sorry, what date, sir?

MR. DAVIS: March of '88.

THE WITNESS: Yes, sir, I do.

BY MR. DAVIS:

Q. Now, approximately what date did you see him?

A. I believe it's the 16th, sir.

Q. And how did you happen to come in contact with Mr. Highlander on the 16th of March?

A. We received a radio call from Ventnor City that they were following a car containing a party that he wanted to talk to that was involved in a domestic violence which occurred in Margate City the night before, as he had the victim in their patrol car and they asked us for assistance.

Q. Was there any reason for your assistance?

A. Sergeant Frank Giorgella from Ventnor City, over the police radio, said that this party may be armed.

MR. TALASNIK: Objection, Your Honor, it's hearsay, ask that it be stricken.

THE COURT: Objection be sustained. Ladies and gentlemen, what somebody said to somebody about what might have been isn't anything we can make evidence upon. You may proceed, Mr. Davis.

BY MR. DAVIS:

Q. As a result of this information, what did you do?

A. We assisted in the stop at Lancaster and Atlantic Avenue, sir.

Q. And who did you stop?
A. We stopped Mr. Richard Highlander and a Mr. Brian Abruzzi.
Q. And do you know whose car it was?
A. I believe Mr. Abruzzi's vehicle.
Q. And what happened after the Brian Abruzzi vehicle was stopped?
A. The complainant -- the complainant and Mr. Highlander went to the Margate Police Department.
Q. Now, at the scene when you stopped them on Atlantic Avenue, that's on Atlantic Avenue, was their car searched in any manner?
MR. TALASNIK: Your Honor, I'm going to object on the grounds of relevance. We're dealing with a homicide committed in late April, we're talking about an arrest in mid March.
MR. DAVIS: Judge, if I could say, the State brought this situation out in their case in chief and was in certain statements in the --
THE COURT: Let me see counsel at sidebar, please.
(The following is heard at

sidebar)

THE COURT: What's the proffer, Mr. Davis?

MR. DAVIS: The proffer is, Judge, that the vehicle was stopped and searched to see if, in fact, there was a gun, because Gloria Simonelli indicated that the defendant had a gun.

THE COURT: No, no, the only evidence in this case that any such thing ever existed was a statement by the defendant. I'm going to sustain the objection.

(The following is heard in open court).

THE COURT: Objection will be sustained.

BY MR. DAVIS:

Q. Now, after you left Atlantic and Nassau Avenue, where did you go to?

A. Margate City Police Department.

Q. And what transpired at the Margate City Police Department?

A. The complainant was given her rights to sign a complaint for the alleged domestic violence that had occurred the night before in

Margate City, and also to go to Atlantic City District Court to domestic violence section to obtain a temporary restraining order.

Q. Okay, now, at that time when the complainant -- who's the complainant, do you know her by name?

A. Mrs. Simonelli, is it pronounced?

Q. Simonelli.

A. Simonelli, yes, sir.

Q. And when she initially came to the police department, did she sign any complaints against the defendant?

A. At that time, no, sir.

Q. Okay. Now, at that time, did you have an opportunity to observe Miss Simonelli physically?

A. Yes, sir, I did.

Q. Did you notice any marks or bruises on her body at that time?

A. No, I did not.

Q. Okay. Now, what happened after she left the police department at that point?

A. I believe we went to her apartment, Monroe Avenue where Mr. Highlander removed his belongings and clothing at that time.

Q. Okay. And did -- what did Mr. Highlander do at that point?
A. He left the area, sir.
Q. Okay. And where did you go, or did you go anywhere with Miss Simonelli at that point?
A. No, sir, I did not.
Q. At any time did she return to the police department?
A. Yes, she did.
Q. And when was that?
A. I don't know the exact time. It was a short time later, she returned wishing to sign a complaint for simple assault.
Q. And was that the same day that she -- that you stopped Mr. Highlander?
A. That's correct, sir.
Q. Okay. And did she sign that complaint for simple assault?
A. Yes, she did.
Q. And what did she do after signing the complaint for simple assault?
A. I -- she left the police department and she came in the next day. I believe it was the next day, sir.
Q. Okay. And when she came to the police

department the next day, who did she come with?
A. I believe her father and her mother were with her.
Q. Okay. And what transpired when she returned to the Margate City Police Department the second day?
A. She told me she wished to upgrade the charges from simple assault to aggravated assault, because she had a broken finger and other injuries to her neck and shoulder which were unknown to me.
Q. Okay. Now, during this meeting between you and she and her mother and father, at any time during that conversation did you harass the father in any fashion?
A. Did I harass the father?
Q. Yes.
A. I don't believe so, sir.
Q. Okay.
MR. DAVIS: That's all I have, Your Honor -- one further question.
BY MR. DAVIS:
Q. Did you ever see Mr. Highlander after that?
A. The next day, sir, I saw him.

Q. Okay.

THE COURT: What was the answer?

THE WITNESS: Yes, sir, I saw him the next day, sir.

BY MR. DAVIS:

Q. Okay. And what was the reason for seeing him the next day?

A. To process him on the new upgraded charge. I had to take his photograph and fingerprints.

Q. And how did you get him to the police department?

A. I called him and he responded the next morning.

MR. DAVIS: Okay, that's all I have, Your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. TALASNIK:

Q. Lieutenant, this contact with Mr. Highlander, was that the first or the only time that you had had contact with him?

A. The first contact was the original stopping that day, then when he came in for pre-processing the second time.

Q. The fellow that was with him, however, was somebody familiar to you, was he not?
A. Mr. Abruzzi? Yes, sir.
Q. And, in fact, you've known him for some time?
A. Approximately fifteen, twenty years.
Q. And you recognized him at the point of the stop?
A. That's correct, sir.
Q. Now, when you returned to city hall, you indicated that you visited with the victim, Gloria Simonelli?
A. That's correct, sir.
Q. And what would be the normal procedure when someone comes in to City Hall indicating they've been assaulted?
A. The normal procedure was we take a written statement, then give them the opportunity to sign a complaint, simple assault. We'll issue a summons and it would be served, either mailed, or served on the party if they're right there at the time.
Q. And that normal procedure was followed in this matter, was it not?
A. That's correct, sir.

Q. I'm going to show you an item that had earlier be marked, I do not have the one that was marked, but it had been given D-5 as a designation, Your Honor?

THE COURT: D-5, that's correct.

MR. TALASNIK: I'd ask that mine be marked anew.

(D-5, Statement of Gloria Simonelli marked for identification).

MR. TALASNIK: I'll show D-5 to Mr. Davis.

BY MR. TALASNIK:

Q. Lieutenant, I'm going to show you a document that has been marked D-5 for identification. I'd like you to look at it and tell me if you recognize what it is?

A. Statement of Gloria A. Simonelli, it was given to me, has my name, witness on the 16th of March, 1988.

Q. Okay. And sometime later that day, she did, in fact, sign a complaint pursuant to that statement?

A. Yes, sir, she did.

Q. And that was done the same day that the assault was alleged to have taken place?

A. No, the next day after the assault took place.
Q. It was done the same day as that statement before you?
A. Yes, yes, sir.
Q. You don't have any personal knowledge as to when the assault occurred as between -- before midnight or after midnight on that date, do you?
A. Only from the statement, sir.
MR. DAVIS: Judge, I'm going to object to what's on the statement.
MR. TALASNIK: Again --.
BY MR. TALASNIK:
Q. The question is, you don't have any personal knowledge as to when the assault took place with respect to the midnight preceding that statement, do you?
A. No, sir, I don't.
Q. Okay. Now, you would have had occasion to speak with Mr. Highlander that same day, would you not?
A. Yes, sir, I did.
Q. And did you discuss with Mr. Highlander the fact that a statement had been taken from

Gloria Simonelli accusing him of an assault?
A. Yes, sir, I did.
Q. What was his demeanor when you advised him that that had occurred?
A. His demeanor. Well, he went on and on that she had assaulted him also, and I told him he could sign a countercomplaint.
Q. What would you say was the principal emotion that you saw in Mr. Highlander when you explained to him about the complaint that had been written up by Gloria against him?
A. He was angry.
Q. He was angry, okay. Now, the next day when Gloria came in, you've indicated that she came in with her parents?
A. Yes, sir, that's correct.
Q. And generally, the same procedure was followed in that she was given an opportunity to write down more information?
A. That's correct.

MR. TALASNIK: Your Honor, I have an one page document that I'd like to have marked for identification.

(S-55, Statement dated 3-17-88 of Gloria Simonelli marked for

identification).

MR. TALASNIK: I'll show S-55 to Mr. Davis.

BY MR. TALASNIK:

Q. Lieutenant, I'm going to show you a one page document that's now be marked as S-55 for identification. I'd like you to look at that and tell me if you recognize what that is?

A. Yes, sir, this is a copy of a statement given to me on the 17th day of March, 1988 by Gloria Simonelli, where she requests us to upgrade her simple assault to aggravated assault.

Q. And pursuant to that request, in fact, an aggravated assault complaint was drawn up?

A. That's correct, sir.

Q. Now, Lieutenant, you've been working for Margate for quite some period, right?

A. Yes, sir.

Q. Would it be fair to say that domestic violence assaults occur on a fairly regular basis within your police work?

MR. DAVIS: I object, Your Honor, relevance.

THE COURT: Sustained.

BY MR. TALASNIK:

Q. Did you ever indicate to Mr. Highlander that you thought Gloria's father was a trouble-maker?

A. No, sir, I did not.

Q. Did you ever indicate to Mr. Highlander that it was Gloria's father who pressured her to upgrade the complaint from simple to aggravated?

A. No, sir, I did not.

Q. Did you have occasion to notify Mr. Highlander that the complaint had, in fact, been upgraded?

A. Yes, I did, sir.

Q. You told us that the first time you talked to him, the principal emotion that he evoked was anger over being told about the complaint, do you remember that?

A. That's correct.

Q. Was that the same emotion when you talked to him about the upgraded charge.

Q. Not when I spoke to him, sir. When he came in for processing he was angry.

Q. He was angry about the new upgraded charge, right?

A. Yes, he was, yes, sir.

Q. Thank you.

MR. TALASNIK: No further questions, Your Honor.

THE COURT: Mr. Davis.

REDIRECT EXAMINATION.

BY MR. DAVIS:

Q. Lieutenant Baake, you indicated the defendant was angry with regard to the upgraded charge?

A. That's correct, sir.

Q. Okay. Now, you spoke to him concerning the upgraded charge the day after the -- the day after he was stopped by you, is that not a fact?

A. Yes, sir.

Q. Okay. You initially spoke to him on the 16th, he had not even had a charge or complaint lodged against him, had he?

A. No, sir, he had not.

Q. And in fact, when you let him leave the police station --

MR. TALASNIK: Excuse me, Your Honor, I want to object to the form of the question as leading. This is Mr. Davis' witness.

THE COURT: Sounds a bit leading, Mr. Davis.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q. Officer, when he was in the police department on the 16th of March, was the complaint signed against him by anyone?

A. When he was in there? No, sir; no, sir; no, sir, after he had left.

Q. While he was physically in the police department?

A. No, sir, it was not.

Q. Okay. On the 16th, when was the complaint charged against him?

A. After he had left the area, removed his belongings from the apartment and left the area.

Q. And you spoke to him concerning the simple assault in what manner?

A. By telephone.

Q. Okay. And when you spoke to him by telephone with regard to the simple assault, could you detect anything in his voice?

A. No, I did not, sir.

Q. Okay. Now, did there come a time that you spoke to him concerning the indictable

charge of aggravated assault?
A. Yes, sir, there was, the next day.
Q. And that was the next day?
A. Yes, sir.
Q. And how many times did you speak to him on the 17th regarding that?
A. Just the period of time he was in the Margate Police Department being processed.
Q. Now, did you speak to him before he got to the police department?
A. I don't believe so.
Q. Okay. And what did you indicate when he came to the police department the second day, the 17th?
A. I explained to him that we had an upgrade on the simple assault to aggravated assault, that I was required by law to take his photograph and take his fingerprints.
Q. And at that time, did he appear to be what?
A. He appeared to be angry over the complaint.
Q. He appeared to be angry over the complaint. And was he released at that time?
A. Yes, sir, he was.

Q. Okay.

MR. DAVIS: That's all I have, Your Honor.

MR. TALASNIK: Nothing further, thank you, Your Honor.

THE COURT: You may step down Lieutenant. Thank you very much.

B R I A N A B R U Z Z I, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Now, Mr. Abruzzi, are you employed?

A. Yes, I am.

Q. And by whom?

A. I'm a union iron worker in Atlantic City.

Q. And how long have you been so employed?

A. About twenty years.

Q. Okay. And are you familiar with Richard Highlander?

A. Yes, I am.

Q. And could you identify him for the Court, please?

A. Gentleman sitting on your right there.

THE COURT: Indicating the

defendant.

BY MR. DAVIS:

Q. And how long have you known Mr. Highlander?

A. About two years.

Q. Is there any relationship between you and Mr. Highlander?

A. Yeah, we were friends.

Q. Now, I'm directing your attention to the fall of '87, did you know Mr. Highlander then?

A. Yes, I did.

Q. And do you know whether or not he had a girlfriend at that time?

A. Yes, I do.

Q. And who was his girlfriend at that time?

A. Gloria Simonelli.

Q. Okay. Did you personally know Gloria Simonelli?

A. Yes, I did.

Q. And how did you happen to meet Gloria Simonelli?

A. Through Rick.

Q. Now, at that time, where were you living?

A. Somers Point.

Q. And what was the address?

A. One Holly Hill Drive.
Q. And at any time during the fall or winter of '87, '88, were you in the presence of Gloria Simonelli?
A. Yeah, on several occasions.
Q. Were you ever in the presence of Gloria Simonelli when she and Richard Highlander were together?
A. Yes.
Q. Okay. And what did their relationship appear to be?
A. Well, they were very close then, boyfriend and girlfriend type thing.
Q. Okay. And what would you approximate the last time that you probably saw the two of them together?
A. Well, I can say two of them together, February, I believe it was February that year, that would have been '88.
Q. Okay, and where were they?
A. We had dinner at my house in Somers Point.
Q. And during the course of that dinner, what, how did their relationship appear to you?
A. Very close. They were close.

Q. Did Gloria appear to be frightened at any time?
A. No, no.
Q. Did she appear to want this relationship to end?
A. No.
Q. Okay. And was she asking Mr. Highlander for anything at that time?
MR. TALASNIK: Objection, leading.
MR. DAVIS: Leading?
THE COURT: No, it's not leading. Is that it? Objection overruled.
MR. TALASNIK: Okay.
THE WITNESS: Could you say that again?
BY MR. DAVIS:
Q. Was she asking Mr. Highlander for anything at that time?
A. Yes, she was concerned about a ring, engagement ring.
Q. And what did she want, did she want this ring?
A. She wanted a ring, yes.
Q. Now, did there -- directing your attention to March 16th or thereabouts, March

16th, were you in the company of Richard Highlander on that date in Margate City?

A. Yes, that's right.

Q. And how did you happen to be in his company?

A. Rick had called me on the phone and asked me if I could pick him up at his apartment, Gloria's apartment.

Q. Okay. And did you pick him up?

A. Yes, I picked him up.

Q. And what did you do once you got to his apartment?

A. Well, at the time, I was on my way to the Unemployment Office, being in the winter we weren't working, and Rick went with me.

Q. And where did you go from the Unemployment Office?

A. Well, I was -- went to Unemployment Office, I was coming back, I was going to go to Somers Point, I was driving back through Margate towards Somers Point.

Q. Now, were you taking Rick Highlander anywhere at that time?

A. To my house in Somers Point.

Q. And why were you taking him to your house

in Somers Point?

A. He and Gloria evidently had broken up and Rick had no place to go and he was limping very badly on a sore foot.

Q. And what happened, if anything, when you got in the vicinity of Margate?

A. Well, we were pulled over by, I think three police cars, and they were -- they pulled me over, and just as I moved, went from Ventnor into Margate, it was Ventnor Police and two Margate Police, I believe, two Margate Police cars.

Q. What happened on the street when they pulled you over?

A. They pulled us over, there was a car in front and a car in back. I believe it was the Ventnor policeman who was behind us. He got out of his car with his gun drawn. That upset me a little bit. I never saw anything like that before, and the Margate Police, one of them, I knew one of the Margate policemen from a long time, and --

Q. And who was this Margate policeman?

A. That was Lieutenant Roy Baake.

Q. Okay. He came to the car and said --

MR. TALASNIK: Objection, hearsay.

THE COURT: Sustained.

BY MR. DAVIS:

Q. Okay. As a result of what he said, what happened, what did they do?

A. Well, they took Rick into custody and they searched my car and Rick went in the Margate police car and I followed him to the police station.

Q. Now, at the scene, or where you were stopped, did you see Gloria Simonelli?

A. Yes, I did.

Q. And where was Miss Simonelli located?

A. She was in the back seat of the Ventnor Police car.

Q. Okay. And did you have an occasion to look at her at that time?

A. From a distance, yes.

Q. Did you notice anything about her?

A. No, I didn't.

Q. Okay. After you left the scene of the stop and went to the Margate Police Department, what happened within the police department?

A. Well, Rick was charged, I believe they called it assault, simple assault, I believe it

was.
Q. And what happened, did there come a time you left the police department?
A. Yeah, I left the police department, Rick needed some money for bail and I went and brought it back, and then Rick was bailed out and we left.
Q. Okay. And where did you go from there?
A. To my home in Somers Point.
Q. Okay, and did you take Rick with you?
A. Yes.
Q. Now, did there come a time that you went back to Margate?
A. I went back the day after.
Q. And for what reason did you go back the day after?
A. I went to get Rick's clothes. They were at Gloria's apartment.
Q. And did you go to Gloria's apartment?
A. Well, at first I went to the police station and told them what I wanted to do, and two policemen went with me to her apartment.
Q. And what was your reason, Mr. Abruzzi, for going to the -- to her apartment?
A. I wanted to get Rick's belongings that

were there.
Q. Okay. And did you get his belongings?
A. Yes, I did.
Q. And who gave them to you?
A. Gloria did.
Q. And how were they given to you?
A. Well, she gave them to me personally, handed to me.
Q. And what were they contained in?
A. Well, there was three -- three large trash bags filled with his clothes and shoes. There was also a large -- rather large cardboard box with tools in it, power tools.
Q. Now, was anyone else at the home besides Gloria when you arrived?
A. Her mother and father were there.
Q. Okay. Now, at that time on the 17th, how close did you get to Gloria Simonelli?
A. Within a foot or so. She was handing me these belongings of Rick's.
Q. And did you have opportunity to observe Gloria on that day?
A. Yes, I did.
Q. Okay. Now, did you notice anything, in terms of injuries, about Gloria?

A. The only thing that I could see that she had an aluminum splint, one of those little bent splints on her little finger.
Q. Did you notice anything about her face?
A. Nothing out of the ordinary, no.
Q. Did she seem to have any problem in moving?
A. No, she didn't.
Q. And what about the articles that she was giving you?
A. Well, as I said, they were large trash bags, three of them, and this box of tools that was -- it was in a shed behind her condominium, she had to walk around to the shed, get the box of tools and walk completely around the building to hand them to me. She didn't seem to have any trouble doing that.
Q. Okay. Now, how long did Rick Highlander remain in your home?
A. Altogether it's about three weeks.
Q. Okay. And did he go anyplace else while he was in your home?
A. Well, he went to the doctors to have his foot looked out.
Q. Okay. And was he in the hospital at any

time?
A. Yeah, he was in the hospital. I believe it was just one day. He had an operation to set his foot.
Q. Okay.
A. I think it took -- I don't think he was in the hospital overnight, but I'm not sure.
Q. Okay. Now, did you notice anything different about Rick while he was in your home in Somers Point?
A. Yes, I did.
Q. And what did you notice?
A. Well, he was very upset about the fact that he and Gloria broke up.
Q. Okay. Did he ever speak to you about he and Gloria breaking up?
A. Constantly.
Q. And what was his emotional state at that time?
A. He was very upset.
Q. Did he indicate to you his feelings in terms of Gloria?
A. Yes, often. He was in love with the girl, he loved her very much.
Q. Did he tell you what his greatest concern

was about Gloria at that time?
A. About why -- what happened, why they couldn't be together.
Q. Now, did he ever speak to you in terms of going to jail?
A. No. That was not -- didn't seem to be a major concern of him. He was concerned about Gloria.
Q. Did he speak to you about jail?
A. No.
Q. Okay. Now, in terms of him drinking, what was his condition at that time?
A. He was drinking a lot.
Q. Now, you had known Rick for how many years?
A. Two years.
Q. Was he drinking more than he did prior to this?
A. Yes, a lot more.
Q. Did you have any barometer in terms of how much he was drinking?
A. Well, I had liquor in my house and he drank all of that up, and I know that friends brought some over for him and he drank that up, and he was drinking a lot.

Q. Okay, and when you would speak to him, what condition would he been in?
A. He was upset, he was upset, I would say despondent type of thing.
Q. Okay. Now, did he ever indicate to you during the course of any of these conversations that he intended to kill Gloria?
A. No, he didn't.
Q. Did that come up in any of the conversations?
A. No.
Q. Now, approximately when is the last time that you saw Rick?
A. I was married on April 16th, that was a Saturday, so it was probably the Tuesday before that.
Q. And did you speak to him at any time after April 25th?
A. No, no.
Q. Did you -- have you ever spoken to him since this homicide?
A. Oh, certainly, yes.
Q. And where was that?
A. He called from the Atlantic County Jail and I've been there to visit him.

Q. And did he indicate to you at any time that you spoke to him in Atlantic County Jail --

MR. TALASNIK: Excuse me, Your Honor, first I want to object to the form of the question.

THE COURT: Sounds like it might be leading. Mr. Davis.

MR. TALASNIK: Secondly, I want to object on the grounds of hearsay, unless there is a proffer as to some exception to the hearsay rule that would cover the call.

THE COURT: The call with the witness and the defendant?

MR. TALASNIK: The call from the defendant to the witness.

THE COURT: I'm going to rule. Let me hear what the question is, Mr. Davis, then I will rule on the second objection, but it did sound like a leading question.

BY MR. DAVIS:

Q. Have you spoken to the defendant since the commission of the crime?

A. Yes, I have.

Q. And where did you speak to him?

A. On the phone and at the Atlantic County

Jail.

Q. Okay. Directing your attention at times that you spoke to him at the Atlantic County Jail, did he speak to you in terms of his feelings toward Gloria?

A. Yes, he did.

Q. And what were they?

MR. TALASNIK: Objection.

THE COURT: Sustained.

MR. DAVIS: That's all I have, Judge.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Thank you.

CROSS EXAMINATION

BY MR. TALASNIK:

Q. Now, Mr. Abruzzi, you've indicated that you were friends of Rick's for about two years. Is this two years up to the present time or two years up to the time of the death of Gloria?

A. About two years to the present time.

Q. Okay. Your contacts with Gloria were limited to those occasions when Rick brought her and the two were together in your company, right?

A. That's right.

Q. You never had any kind of a relationship with Gloria other than with Rick?
A. That's right.
Q. And you would have never had occasion to talk privately with Gloria about anything?
A. Well, that's not completely true. Rick asked me to call Gloria on the phone several times after they broke up.
Q. Okay. Prior to the time that you saw them together in February of 1988 --
A. Uh-huh.
Q. -- Would it be fair to say that you never had occasion to talk to Gloria personally?
A. That's right.
Q. Okay. At any time that she was outside of the presence of Rick?
A. That's right.
Q. Now, the last time that you saw the two of them together, you've indicated, is approximately February of 1988?
A. That's right.
Q. So that was the month before the assault that gave rise to the assault that bothered you?
A. That's right.
Q. Now, at the time that the arrest took

place, and focusing upon that day and the next couple of days, it was apparent that Gloria had decided to rid herself of Rick, isn't that so?

A. Yes.

Q. She had, in fact, gone to a doctor and you drove by and saw her car at the doctor's office that day?

A. I didn't see her car at the doctor's office.

Q. You didn't drive by the doctor's office and see her car parked there?

A. Well, I might have driven by her doctor's office. I don't know where the doctor's office is, I did not see her car.

Q. There was no indication to you by Rick that that was her car?

A. I can't say for sure. I don't remember that distinct thing, no.

Q. Okay. She had, however, gone to the police that day and had apparently complained to them, or else he wouldn't have been arrested?

A. Apparently.

Q. And Rick was aware that he was being brought into custody, after he was taken into custody, as a result of charges that had been

made against him by Gloria?
A. Evidently, yes.
Q. And he was advised by the police that that was the case, and you were there, right?
A. That's right.
Q. And he ultimately was notified that a complaint had been signed against him for assault, right?
MR. DAVIS: I --
THE WITNESS: That's right.
MR. DAVIS: Your Honor, his answers appear to be assumption.
THE COURT: No, the last -- the objection to the last question is sustained, although it's been answered, in that there is no foundation for the answer, Mr. Talasnik.
BY MR. TALASNIK:
Q. Were you physically there when it was explained to Mr. Highlander that he was being charged with anything?
A. Yes, I was.
Q. So you can say that Rick was made aware by the police that Gloria had now gotten to the point that she was going to charge him with something?

A. Yeah. I believe so, yes.
Q. And you are also having Rick live with you over the next few days at the time that Rick was advised that charges had been upgraded to indictable charges, right?
A. I don't remember the exact sequence or the terms upgraded charges. I'm not familiar with that type of thing. Although I do know there were charges, yes.
Q. Okay. And you knew, because Rick lived in your home with you, that he was aware of that fact?
A. Yeah.
Q. You also were aware of the fact that it was no longer appropriate for him to continue to live with Gloria?
A. Yes.
Q. You helped him get his clothes out, right?
A. That's right.
Q. And you took him there and you got his clothes and his power tools and everything else?
A. That's right.
Q. And therefore, Rick knew that, through the course of that week that followed the

assault, that Gloria was indicating a desire to get her out of her (sic) life?

A. Well, that's not really what Rick thought.

Q. Rick was aware that he'd been stopped by the police, correct? He was aware that complaints had been brought against him by Gloria, correct?

A. That's correct.

Q. He was aware that it was appropriate for you to take him to her house so he could clean out and move out?

A. That's right.

Q. And that it was necessary for him to move in with you cause he couldn't live there any more?

A. That's right.

Q. Didn't he also tell you about the restraining order, that he had to stay away from her?

A. Yes, he did.

Q. And that's why he couldn't contact her or try to contact her, because it would have violated the restraining order that he knew about, right?

A. Right.
Q. And that gets us to the point you mentioned earlier, that he asked you to try to contact her?
A. That's correct.
Q. And you made those efforts?
A. I did.
Q. And it did not result in any kind of a reconciliation, did it?
A. No, it didn't.
Q. You've indicated that you had occasion to see Gloria on the first few days after the assault took place, correct?
A. That's right.
Q. And that you did not see any injuries on her other than the splints on the finger?
A. That's right.
Q. And that would include any injuries on her face?
A. That's right.
Q. And you saw her the day that Rick was arrested?
A. Yes, from a distance.
Q. And you saw her when you went to pick up the clothes?

A. That's right.
Q. And you still saw nothing on her face?
A. No.
Q. I'm going to show you a couple of photographs that have earlier be marked as S-45 and S-46 in evidence. I'd like you to look at them, tell me if you recognize what they are?
A. Yeah, they're pictures of Gloria with a neck brace on.
Q. Do the pictures also depict some kind of injury that is visible around her eye?
A. Yes, uh-huh.
Q. But it is your testimony that that injury was not there when you saw her the day after the assault?
A. That's right.
Q. You have told us that Rick consumed a lot of alcohol when he lived with you, correct?
A. Uh-huh, that's right.
Q. But that the last time you saw him would have been the Tuesday before April 16th?
A. That's right.
Q. That would have been around the 11th or 12th, maybe?
A. Yeah, that's right, around there.

Q. So you would have no personal knowledge as to what his level of consumption may have been on, say, April 25th?
A. No, of course not.
Q. You have told us that Rick expressed to you that he loved Gloria?
A. Right.
Q. And that he wanted to reconcile with her?
A. That's right.
Q. And he wanted to reconcile with her even after the charges had been made against him by her?
A. Right.
Q. Even after she had evicted him?
A. That's right.
Q. And even after the restraining order so that he couldn't contact her?
A. That's right.
Q. And he was developing frustration because he could not visit with her, he couldn't try to talk her out of the situation, correct?
A. That's right. He felt that if he talked to her personally, they could reconcile their differences.
Q. But he wasn't able to do that, and so he

wrote letters?

A. I imagine he wrote letters. I never saw them.

Q. He elicited your help for you to try to contact her for him?

A. That's right.

Q. And his only concern was that he wanted to reconcile with her?

A. Yes.

Q. And he had no concern really about the simple assault charge that she had filed against him as a result of the incident in the middle of March?

A. That was not his major concern, no.

Q. Was it a concern?

A. He never talked about that much. He talked about Gloria.

Q. He never talked about the charge against him?

A. Yes, he -- he talked about the charge but he felt that that could be -- if he could talk to her, that would be part of the reconciliation, I'd imagine that's what he was thinking, but he was concerned about getting back with Gloria.

Q. He felt that if he could talk to her, he could somehow talk her out of the charges that she had brought against him?
A. No. He wanted to talk to her so they could go back together again.
Q. Do you recall Thursday evening after Gloria Simonelli died a police officer coming to your home?
A. In my new home you're talking about?
Q. Whatever home you were living in on the 28th of April, 1988, three days after the death of Gloria Simonelli?
A. Three days after the death. No, I don't.
Q. You don't recall being visited along with your new wife by Detective Teasenfitz of Margate City Police Department?
A. Yes, but that was -- I'm sure that was much more than three days afterwards. Now, I might be wrong in my days there, but I do remember the incident when the officer from Margate came over, yes.
Q. And you recall that among the things that happened were that they collected from you, or from the residence, things that belonged to Rick that had been left there by Rick?

A. That's right.
Q. Including clothes and papers and things like that?
A. Paper, right.
Q. Isn't it true that at that time that you and your wife were interviewed by Detective Teasenfitz?
A. That's right.
Q. And isn't it true that you indicated to him, and that your wife also indicated in your presence, that Rick had had some difficult times with Gloria?
A. Yes.
Q. And isn't it true that you and your wife, in your presence, indicated that he was very concerned about going to jail over the charges filed against him by Gloria?
A. I don't remember that specifically, no.
Q. And isn't it true that you and your wife, in your presence, indicated that the defendant was put under a lot of pressure by Gloria with the restraining order and the complaints that she had signed against him?
A. Yes, that's true.
Q. But your references to, or you -- you

-- are you now saying that you never told the detective that Mr. Highlander was very concerned about going to jail over the charges filed by Gloria?

A. I don't recall that, no.

MR. TALASNIK: No further questions, thank you, Your Honor.

THE COURT: Mr. Davis.

REDIRECT EXAMINATION.

BY MR. DAVIS:

Q. Now, Mr. Abruzzi, the prosecutor referred to difficult times with Gloria?

A. Uh-huh.

Q. And you answered in the affirmative. What did you mean when you said that Rick had difficult times with Gloria?

A. Well, Rick wanted to talk to Gloria, he wanted to have a relationship with her, and she absolutely refused to talk to him, and that caused Rick a great deal of heartache, let me put it that way.

Q. Now, you've also indicated that he was put under pressure by Gloria, what did you mean by that?

A. Well, when we had dinner together, Gloria

was very concerned about getting a ring and about paying the bills and about money.

Q. What -- how did that put Mr. Highlander under pressure?

A. Well, that time was a slow time for Rick's business, the summer's a good time for his business, and we were in the winter, and I guess there was because there wasn't as much money around as she would have liked.

Q. Now, when this Officer Teasenfitz came to your home to interview you, did he interview you and your wife separately?

A. No.

Q. How did he interview the two of you?

A. We were sitting at the kitchen table.

Q. And what was the -- did he take notes or what was he doing at that time?

A. He was listening to what we said, asking questions and listening. I don't remember him taking notes.

Q. Okay. And when he would answer a question, how would it be answered, by you or your wife or how?

A. Well, by the both of us, or whoever had knowledge of whatever his question was.

Q. Okay.

MR. DAVIS: That's all I have, Your Honor.

THE COURT: Mr. Talasnik.

RECROSS EXAMINATION

BY MR. TALASNIK:

Q. The incident that you're talking about regarding being put under pressure for money, this happened in February of 1988, right?

A. That's when they were at my house for dinner, yes.

Q. And is the discussion of Rick being put under pressure for money for a ring or whatever, that relates back to the February incident, right?

A. Yeah, that's that only time that I heard Gloria speak of it herself, on -- Rick spoke of it at other times.

Q. But the next month she threw him out and signed complaints against him?

A. That's right.

Q. And Rick knew that she had --

MR. DAVIS: Judge, I'm going to object.

MR. TALASNIK: -- In that she had

thrown him out.

MR. DAVIS: Outside of cross.

THE COURT: Also quite repetitive, Mr. Talasnik.

BY MR. TALASNIK:

Q. You're referring to Gloria putting him under a lot of pressure and could have related to the charges and the effect that it would have on his probation in jail, or anything of that, could it?

A. That's not how I understood it, no.

Q. Defendant told you that he wanted to have the relationship, but she refused to have any contact with him?

A. That's right.

MR. DAVIS; I'm going to object again, this is outside of cross.

MR. TALASNIK: Your Honor, I believe that it's the specific answer that this witness gave on a redirect question.

THE COURT: I'll permit it.

THE WITNESS: Would you ask it again, please?

BY MR. TALASNIK:

Q. You indicated to Mr. Davis that the

defendant wanted to talk to the victim to have a relationship, but that she refused to have any contact with him?

A. That's right.

Q. Didn't the refusal of Gloria to have contact with Rick frustrate him?

A. Yes.

Q. And hurt him?

A. Yes, it did hurt him.

Q. And anger him?

A. I wouldn't say anger him, no.

Q. Okay. Hurt, however, you would say?

A. Yes.

Q. And frustrated, you will say?

A. Yes, frustrated.

MR. TALASNIK: No further questions.

MR. DAVIS: I've no questions, Your Honor.

THE COURT: You may step down, Mr. Abruzzi. Thank you very much. You may call your next witness, Mr. Davis.

J U D I T H A B R U Z Z I, HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DAVIS;.

Q. Now, Mrs. Abruzzi, are you employed?

A. Yes, I am.

Q. And by whom?

A. Sheraton Inn, Pleasantville.

Q. And what capacity?

A. Director of sales and marketing.

Q. Okay. Are you familiar with Richard Highlander?

A. Yes, I am.

Q. And do you see him in the courtroom?

A. Yes, I do.

Q. Would you point him out, please?

A. Yes, he's sitting right next to you.

THE COURT: Pointing to the defendant.

BY MR. DAVIS:

Q. And how long have you known Mr. Highlander?

A. About two years.

Q. And are you any relation to Brian Abruzzi?

A. Yes, I am.

Q. And okay, what's your relationship to

him?
A. I am his wife.
Q. And when were you married?
A. April 16th, 1988.
Q. Okay. Now, directing your attention to November, December of '87, were you familiar with Richard at that time?
A. Yes.
Q. And did you know a Gloria Simonelli?
A. Yes.
Q. And how did you happen to know Gloria Simonelli?
A. She was Rick's girlfriend.
Q. Okay. Now, was there any relationship between you and Mr. Highlander?
A. We were formulating a business relationship.
Q. And did this have any effect upon Gloria?
MR. TALASNIK: Your Honor, before the answer's given, I'm going to object. It calls for this witness to speculate and there's no foundation that would permit it.
THE COURT: Mr. Davis, I'll see you at sidebar.
(Whereupon the following is

heard at sidebar).

THE COURT: What's the proffer?

MR. DAVIS: The proffer is, Judge, jealousy between she and Gloria, or Gloria and this lady.

THE COURT: So what? How's that relevant?

MR. DAVIS: It's relevant, I think it would be relevant, Your Honor, to the testimony to Gloria's credibility.

THE COURT: Gloria's credibility?

MR. DAVIS: Sure, it's been many statements here that Gloria's indicated to other people. Gloria hasn't testified directly, Judge, but there is insinuations as to what Gloria believed.

THE COURT: Such as?

MR. DAVIS: Her --

MR. PRESTON: How about on the fresh complaint?

MR. DAVIS: Fresh complaint, the fresh complaints you let in, Judge, is --

THE COURT: How would -- how would the fact Gloria might have been jealous about somebody else have anything to do with that?

What has that got to do with the credibility?

MR. DAVIS: Well, Judge, it -- jealousy, the credibility goes to the way a person thinks and the way they react.

THE COURT: I can't see it, Mr. Davis.

MR. DAVIS: Judge, it's indicated that if there is a jealous relationship, or if Gloria is jealous of this lady, it could effect her relationship with Rick and why she did what she did.

THE COURT: Mr. Davis, I'm going to let you do it to a limited extent. I don't think it's relevant, I don't think it makes much difference why she did it, I think what's relevant in this case is what she did. I don't think her motivation or her jealousy are at issue. The only issue in the case, as far as I'm concerned, with respect to her is whatever impact she did had on him and caused him to do, think and feel. Why she did what she did, in my view, is not very relevant. I will permit it to a limited extent.

(Whereupon the following is heard in open court)

BY MR. DAVIS:

Q. Mrs. Abruzzi, had you ever been in the company of Rick Highlander and Gloria Simonelli?

A. Yes.

Q. On approximately how many occasions would you indicate?

A. And limit it to December or -- I'm sorry, November, December of '87 through February '88.

A. We had dinner together at Brian's house in February.

Q. Okay. Had you been in their company at any time before that?

A. Just briefly. I had met Gloria one day when when Rick brought her up to Howard Johnsons and through picking up payment for washing windows.

Q. And on that one brief occasion, what -- how did their relationship appear to you?

A. Fine.

Q. When did you have dinner with him?

A. It was a week before Valentines Day.

Q. And where was this dinner held?

A. At Brian's house in Somers Point.

Q. Now, was Gloria there?

A. Yeah, she was.
Q. And what did their relationship appear to be at that time?
THE COURT: We're talking about February now.
MR. DAVIS: February, yes, just before Valentines Day, Your Honor.
THE WITNESS: Seemed fine.
BY MR. DAVIS:
Q. Okay. Did Gloria want anything at that time from Rick, to your knowledge?
A. Well, we had a nice, easy, long dinner. We spent a lot of time around the dinner table and there was some mention of a ring.
Q. Okay, what type of ring are we speaking of?
A. A diamond ring.
Q. And who wanted this?
A. Gloria.
Q. Did Gloria appear at that time that the relationship was coming to an end?
A. No.
Q. And did you ever see Gloria in Mr. Highlander's presence subsequent to that time?
A. No.

Q. Okay. Did there come a time that Rick came to your home?
A. Yes.
Q. Okay, and when was that?
A. Well, during the formulation of the business that we were trying to formulate, he used to come over on Saturday mornings for coffee.
Q. And what period of time was this, approximately when?
A. November, December, January.
Q. Okay. Did he speak in terms of Gloria during those months?
A. Not in the first few months. We were basically trying to get a business together. It started around -- it was either before Christmas or after Christmas, because he had mentioned to me that he had purchased her a nine hundred dollar gold chain for Christmas.
Q. And how did he -- did he indicate his feelings toward Gloria at that time?
A. Very much so. He told me he wanted to marry her.
Q. Now, directing your attention to after March 16th?

A. Uh-huh.
Q. Do you know what happened on or about March 16th between Rick and Gloria?
A. I know they had a fight, I know Rick fell downstairs and broke his ankle.
Q. Okay. Now, did you speak to Rick at any time after March 16th of 1988?
A. Yes.
Q. Okay. And where did this take place?
A. Took place at work, took place at my home, I spoke to Rick a great deal.
Q. Okay. And what was his concern at that time?
A. He was very, very hurt.
Q. And what was he hurt about, did he tell you what he was hurt about?
A. He couldn't understand why Gloria didn't want him any more.
Q. Okay. Did he have any other concerns other than that?
A. No. He was just totally engulfed in her.
Q. At any time did he indicate to you that he intended to do harm to Gloria?
A. No.
Q. Do you recall the police officer coming

to your home?
A. When?
Q. About April 27th, 28th, a few days after the shooting?
A. This year.
Q. This year, '88 -- '88?
A. There was no policeman that came to my home in '88.
Q. Teasenfitz?
A. Teasenfitz, yes, Steven.
Q. Do you recall him?
A. Yes.
Q. And where did he come -- where did you speak to him?
A. I spoke to him in my home.
Q. Okay, and who was there when he spoke to you?
A. Brian.
Q. And you responded -- recall speaking to him?
A. Yes.
Q. And do you recall speaking to him in terms of pressure?
A. Pressure to whom?
Q. Pressure Rick Highlander was under?

A. Yes.
Q. And what did you mean when he indicated that to him?
A. That the mental pressure that Rick was going under, that he had -- that he had gone under, it was an accumulation of everything that had taken place. The man comes home for dinner and gets thrown out by his girlfriend's wife -- girlfriend's mother, and he doesn't understand why, and he wants to talk to her. The man made an enormous amount of money, he's an entrepreneur, he did it all himself.
MR. TALASNIK: Your Honor, I'm going to object on the grounds of relevance. I fail to see how this relates to the shooting of Gloria Simonelli.
THE COURT: Sustained.
BY MR. DAVIS:
Q. What did you mean when you used the word pressure?
A. That he was under a lot of mental pressure because he had lost her.
Q. Okay. Did you indicate to the officer what kind of times that Gloria had put Rick through?

A. Yeah.
Q. And what did you indicate?
A. That Rick was the victim.
MR. TALASNIK: Your Honor, I make the same objection.
THE COURT: Sustained.
BY MR. DAVIS:
Q. Okay. Did Rick ever indicate to you what types of situations that Gloria had put him through at that time?
A. Yes.
Q. And what did he say?
MR. TALASNIK: Objection.
THE COURT: Sustained.
MR. DAVIS: Could we approach sidebar.
(The following is heard at sidebar).
MR. DAVIS: Judge, it appears that Mr. Talasnik asked these very same questions.
THE COURT: That's correct.
MR. DAVIS: And they are admissible.
THE COURT: They are not, not when you ask them. You're trying to get her to

explain a statement that she made out of court.

MR. DAVIS: No, I am not. I am trying to get her to explain what Rick Highlander told her.

THE COURT: You can't have her elicit testimony. A statement from the defendant is admissible against him, not for him. That's the way I read the hearsay rule.

MR. DAVIS: All right.

(Whereupon the following is heard in open court).

BY MR. DAVIS:

Q. Mrs. Abruzzi, at any time after March 16th, did Mr. Highlander reside in your home?

A. Yes.

Q. And when was that?

A. When Brian brought him home from the hospital.

Q. And approximately when was that?

A. That was right in March.

Q. Okay. And why did you take him into the home?

A. One, because he can't stay at Brian's house, he couldn't walk any stairs and the bathroom, there was only one bathroom at Brian's

house and he had to walk up like eight stairs to it. And Rick had an operation on his ankle, and I lived in a rancher, which would mean it would be a lot easier for him to go to the bathroom.

Q. Okay. And did you notice anything about Rick in terms of alcohol consumption?

A. From the hospital?

Q. After he got home from the hospital?

A. Well, he did not drink in my home. However, he did drink a great deal after that.

Q. Okay.

MR. DAVIS: That's all I have, Your Honor.

CROSS EXAMINATION

BY MR. TALASNIK:

Q. You've told us that you used to speak with Rick in your home because the two of you were developing a business relationship?

A. That's right.

Q. Okay. During these conversations, was your daughter Jennifer Saitz there?

A. She lives in my home, yes, she does.

Q. And it was through you that Jennifer Saitz knew Rick, right?

A. That's right.

Q. Now, during the course of the relationship that you observed between Rick and Gloria, the last observation that you made of the two of them together was a week before Valentines Day, correct?

A. Yes.

Q. Valentines Day being about the 14th of February?

A. Yes.

Q. So a week before you're into like the 7th and 8th, around in there?

A. Somewhere in there, yes.

Q. You would not have had occasion to see how the two of them acted together, therefore, on say the 16th of March, 1988?

A. No.

Q. Or the 25th of April, 1988?

A. No.

Q. In the course of any conversations that you had with Rick?

A. After he moved away from Gloria's house, Rick expressed, did he not, concern over going to jail regarding Gloria's charges, isn't that so?

A. He did not want to go to jail.

Q. And he expressed that to you regarding Gloria's charges, isn't that so?
A. Yes, he did -- no, no, he didn't want to go to jail. I don't think anybody wants to go to jail. He didn't want to go to jail.
Q. Didn't he express concern over going to jail as a result of the charges brought against him by Gloria?
A. Yes.

MR. TALASNIK: No further questions, thank you, Your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: I have no further questions, Your Honor.

THE COURT: You may step down, Mrs. Abruzzi, thank you very much for coming. Mr. Davis.

MR. DAVIS: Judge, I don't know if the other witness is here. I'll check.

THE COURT: All right. I'll tell you what, we'll take a brief recess so you can check it out. Ladies and gentlemen, we'll take five for a minute then see what we do from there.

(The following is heard out of the

presence of the jury at 3:12).

THE COURT: Who else do you have this afternoon, Mr. Davis?

MR. DAVIS: Maybe no one, Judge. I'll let you know in a minute.

THE COURT: Who else is scheduled?

MR. DAVIS: Haywood was downstairs.

THE COURT: Is he down there?

SHERIFF: Yes, sir.

THE COURT: He's downstairs. Check him out.

MR. DAVIS: That's it.

THE COURT: That's it for this afternoon?

MR. DAVIS: Yeah, yeah.

THE COURT: Forgetting for the moment of whether you're going to call Haywood or not, which I gather you still haven't decided, who's for tomorrow?

MR. DAVIS: I gave the names to Mr. Talasnik, Judge.

MR. TALASNIK: The names, Your Honor, that I was given were Antonette Morrell, Avis Carter, Odessa Boulware, Butch Cozart and

Anthony Mammoccio.

MR. DAVIS: Yeah.

MR. TALASNIK: Those are the names I was given by Mr. Davis.

THE COURT: Is that the complete list, Mr. Davis?

MR. DAVIS: That would be it, Judge.

THE COURT: Take a brief recess now and then you'll let me know if you're going to use Mr. Heywood.

(Whereupon Court takes a brief recess).

(Whereupon the following is heard out of the presence of the jury at 3:55).

THE COURT: Mr. Davis.

MR. DAVIS: Yes, Judge.

THE COURT: Have you had the opportunity to confer with some of the witnesses?

MR. DAVIS: Yes, Judge. What I decided to do is present one more witness, which would be Avis Carter, who's a nurse at the jail, who will present certain documents, medical

documents.

THE COURT: Then it's your contemplation that the defense will rest?

MR. DAVIS: Yes, Your Honor.

THE COURT: And she's not available this afternoon.

MR. DAVIS: No, she is not.

THE COURT: She's the same witness that testified from the pretrial hearing.

MR. DAVIS: Yes.

THE COURT: Okay. We'll call her, or you may call her first thing in the morning. Mr. Talasnik, you've indiated you may have some brief rebuttal in the morning?

MR. TALASNIK: Yes, Your Honor. I have an investigator attempting to locate Detective Teasenfitz. At this point, he's the only rebuttal witness I contemplate calling.

THE COURT: Okay. Gentlemen, it is then my contemplation that you should be in a position to sum up in the morning, is that correct?

MR. DAVIS: Yes, Your Honor.

THE COURT: What I think then we'll do is tell the jury to come a little late.

We'll use the time first thing to discuss the charge, because we'll want to discuss the charge before you sum up. You have gotten today my proposal for the charge which you can look at tonight and review. We'll start with that first thing in the morning and get that out of the way, then Mr. Davis, you can complete your presentation in front of the jury and you'll rest. Mr. Talasnik, you can present your rebuttal and then you'll rest, and then, Mr. Davis, we should be going right into summation.

MR. DAVIS: Right, I'll be ready, Your Honor.

THE COURT: And I would ask you both to be prepared to sum in the morning. Mr. Davis, also, before you leave tonight, so that it can be addressed tomorrow, I'd appreciate if you would discuss with Mr. Highlander, unless he changes his mind between now and tomorrow, discuss that part of the charge that I'm going to have to address with him directly, the text is in the material that you have, so he can be prepared to respond to me tomorrow morning on that. I should excuse the jury now for the day. Is that how you see it, gentlemen?

MR. DAVIS: Yes, Judge.

THE COURT: I'm going to indicate to the jury that it's my expectation that we'll be turning this matter over to them tomorrow. I'm going to just leave it at that. I'm just going to leave it at that. All right, sheriff. If you want, Mr. Davis, after the jury recesses this afternoon, I can present the question to Mr. Highlander now and then he can think about it.

MR. DAVIS: We can do that, Judge.

THE COURT: After the jury leaves.

MR. DAVIS: Okay.

(The following is heard before the jury at four o'clock).

THE COURT: Ladies and gentlemen, the defense has one additional witness to present who will not be available this afternoon, and accordingly, we're going to recess your part of the case now and send you home for the day. Let me tell you what I now know about the scheduling. When you come in tomorrow morning, they'll be some brief testimony to present to you that should not take too long, and then once the testimony tomorrow

morning is completed, we will turn to closing arguments, or final summations, as they're called, I'll explain that to you tomorrow. And it is my present expectation that we will turn the matter over to you sometime during the day tomorrow. That is my present understanding of our schedule.

Now, as far as tomorrow is concerned, the good news, I guess, from your point of view is I'll ask you to be here and ready to go at 9:30 because we have a couple of things to talk about first thing in the morning that will not involve you, and I think we can get started with you at 9:30, please be here and ready to go at that time. Now that will give me a half hour in the morning and half hour today, plus whatever I have in my account. I'm mentioning that to you because I may need to spend most or all of that tomorrow. I can't tell you what your schedule tomorrow will be other than what I already have, because I don't know, but I guess the best thing I could say to you is stay loose, and you'll know almost as much as I know whenever I know about what the schedule is. In fact, at some point you may

know more, but be that as it may, that's our tenative arrangement for the time being. You can't assume, however -- what I'm specifically telling you is that you can't assume tomorrow that necessarily we'll quit at 4:30, that's essentially what I'm telling you.

Okay, generally, as always, it is imperative, particularly as we get close to the end of the case, it is imperative that you refrain from any discussions, it's imperative that you insulate yourself from any media. It's also important, as I've told you once or twice before, you may, and should give some consideration to what you've heard, it's only natural, it's proper, but you should keep an open mind, not reach any final conclusions in your own mind. There is still some more evidence to hear, and even I don't know the evidence, of course. You Have the final argument by each attorney, which is important, and then there are, of course, the instructions that I will be giving you about the applicable law, much of which you haven't yet heard, so it's important that while you think about what you've heard and while you reach some notions in

your own mind about your reactions to it, that you keep everything open in your mind until the time comes for you to deliberate together, which I expect, at this point, will probably start tomorrow afternoon. Have a nice evening, see you at 9:30.

(Jury is excused at 4:02).

THE COURT: All right. Mr. Highlander, the defendant, you've indicated that it is your present thinking -- you may be seated, it is, Mr. Davis, as you've indicated, your present thinking that the defense will rest tomorrow morning with the presentation of the one witness from the County Jail. The defendant, of course, may choose at any time before the defense rests to change his mind after consultation with you, and I don't mean by what I'm going to say now to preclude that, but Mr. Highlander, in the event that you determine not to testify as a witness in the case, I will tomorrow ask you a question, and I'll set the question up now and not ask you today for any response, and you should listen to what I have to say, give some thought to it, discuss it over the evening with Mr. Davis and Mr. Preston, and

then tomorrow I'll ask you what your answer is. In the event that you choose not to testify in the matter, you have a choice about whether I will or will not read what I m about to read to you to the jury when I give them my final instructions. It's entirely your choice after you've discussed it with your attorney. If you ask me to read this to the jury as a part of my remarks, I will read it. If you ask me not to read it to the jury as part of my remarks, I will not read it. What I'm going to do now is read it for you, ask if you've heard it, if you understood it, and leave it there till tomorrow, at which time, if you haven't testified, I'll ask you to tell me what your answer is. Do you understand and follow all that?

THE DEFENDANT: I understand.

THE COURT: The defendant in this case chose not to be a witness. It is the constitutional right of a defendant to remain silent. I instruct you that you are not to consider, for any purpose or in any manner in arriving at your verdict, the fact that the defendant did not testify, nor should that fact enter into your deliberations or discussions in

any manner or at any time. The defendant is entitled to have the jury consider all of the evidence and he is entitled to the presumption of innocence regardless of whether he testifies as a witness. Did you hear that?

THE DEFENDANT: Yeah, I did, Your Honor.

THE COURT: Did you understand it?

THE DEFENDANT: Yes, I did.

THE COURT: You should, this evening and tomorrow, discuss it with your attorneys, and if, in fact, you decide not to testify, I will ask you tomorrow whether you wish me to read that to the jury or you wish me not to. In either event, whatever your discussion is, that's what I will do. Okay. What I'd like you to do, gentlemen, is to be here at 8:45. We will review whatever testimonial presentations there are to be made in the morning and then we will use the time, presumably between 9:00 and 9:30, to discuss your reactions to and recommendations with respect to the jury charge, or the instructions, rather, which I gave you today, and then we will proceed into taking of the testimony and the

final arguments. Anything else I need to know or any questions?

MR. DAVIS: I have none, Judge.

MR. TALASNIK: No, thank you, Your Honor.

THE COURT: Okay. See you in the morning.

(Court is adjourned at 4:05)

C E R T I F I C A T E

I, KATHY E. DURAND, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC IN THE STATE OF NEW JERSEY DO CERTIFY THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN BY ME IN THE ABOVE CAPTIONED MATTER.

Kathy E Durand

KATHY E. DURAND, CSR, CM
OFFICIAL COURT REPORTER
LICENSE NO. XI00868

DATE: 10-1-89

Jukes Intake

A-59-89T4

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
ATLANTIC COUNTY
INDICTMENT NO. 88-06-1553-C

A-59-89T4

STATE OF NEW JERSEY,

Complainant,

-vs-

RICHARD HIGHLANDER,

Defendant.

TRANSCRIPT OF
PROCEEDINGS

RECD
APPELLATE DIVISION
JUL 11 1990
3-C
Clerk

Mays Landing, N.J.
June 21, 1989

B E F O R E:

HON. STEVEN P. PERSKIE, JSC.

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQ.

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

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

MURRAY TALASNIK, ESQ.
Assistant Prosecutor
For the State of New Jersey

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THE COURT: Gentlemen, notwithstanding that you have received and commented upon the exact text of the charge, after the charge is completed I will afford you the opportunity to make such additional comments at sidebar as you choose, understanding that I will incorporate by reference then the reiteration of any objections that are still current with respect to the charge that you made before I gave it.

MR. PRESTON: Did I misunderstand? I was under the impression that you were going to have the charge reprinted and we were going to be provided with a copy of those things that you had corrected.

THE COURT: Yes, you misunderstood because the only capacity that I have to reprint is at my home and I gave you the text, the changes are few.

MR. PRESTON: Well, my problem is I left what I thought was the obsolete version across the street.

THE COURT: I understand. Mr.

Davis has one there. The first change is on page fourteen at the end of the second full paragraph where I will add a reference to the testimony this morning from Detective Teasenfitz to the one that's already there regarding the testimony of Abruzzi.

The next change is on page five where I will omit the first full paragraph at the defendant's request. Next change is on page seventeen where I will omit the last line of the second full paragraph. Next change is on page eleven where I make two changes or three, in the first paragraph, not the full one, about five lines from the bottom it says what is required is, I have deleted a showing of and inserted that there is evidence of, and two lines further down I have deleted you must be satisfied and in the next paragraph at the very end after the word required I have added whether or not he was intoxicated. On page twelve at the beginning of the third full paragraph where it says question A is called aggravated manslaughter, 2A rather, I made a period after manslaughter instead of a comma, deleted the word and and

capitalized the I in it and in between manslaughter and it I am inserting the following. This is a different kind of manslaughter from the passion provocation type of manslaughter. On page thirteen after the first full paragraph I have inserted two additional sentences, the wording of which we worked out this morning. I'll give it to you. That's the last change I have in my written text.

MR. PRESTON: The last one on page thirteen?

THE COURT: Which I'm about to give you where I will insert, prior to the paragraph that begins in sum, I will insert the following. You will remember that I explained that intoxication of a defendant may be such as would prevent him from acting purposely or knowingly. When recklessness is the relevant element of the charge, however, if the defendant was by reason of intoxication unaware of that risk that he would have been aware of if he were sober, that unawareness is immaterial and he may still be found to have acted recklessly.

Other than that the form that you have is the form I'll deliver.

MR. PRESTON: The phraseology about immaterial, it's not immaterial to everything. It's just immaterial to recklessness and I don't think the last part of your sentence makes that clear. It says it's immaterial, it doesn't say to what. I would say that state is immaterial to the state of reckless and describe it that way. It's certainly not immaterial to whether it was purposely or knowingly.

THE COURT: Well, in the first place we're not talking about purposeful or knowing at this part of the charge, but let me see what the statute says. I think I took that language out of the statute. I did. I'll stick with the statute. You may be right, but I think you should make that case to the legislature.

MR. PRESTON: Judge, may I suggest that there is language in the cases advising that the mere reading of statutory words is not enough to explain law and in such case I think Your Honor has great

discretion to make sure that the jury clearly understands what it is.

THE COURT: You're absolutely right without question. It's about ten minutes after twelve. I'm going to finish as close to three as I can. We'll see what happens and what time it is when I finish as to what we do after I finish. We'll make a judgment at that time with respect to which I will consult with you.

(Jury returned to the courtroom).

THE COURT: Ladies and gentlemen of the jury, at this point in the proceedings it is my responsibility to present to you my final instructions on the law that applies to this case. During the course of the trial it has been my duty to assure that the trial has been conducted in accordance with the law and with the rules of our courts. As you know I have made legal rulings on objections to certain questions or remarks and I may even have addressed questions to some of the witnesses. As I explained to you, you should attach no

significance to the fact or result of any objections by counsel and you should not afford any particular significance to the questions that I may have asked or to the answers to those questions. The attorneys have the obligation to make objections when they believe they should and you should not give any consideration to how many objections each side may have made or to how I ruled on them. Neither should you anticipate or listen for any hint or suggestion from me about how I think you should decide this case.

As I explain the law to you, you will be bound by your oath to accept it and to apply it to the facts of the case. You might perhaps disagree with certain aspects of the law and think it should be otherwise, but you have no authority to disregard my instructions as to the law. Similarly I have no power or authority to interfere with your exclusive responsibility to decide the facts of the case. Don't listen for any hidden message as to how I think you should decide the issues that will

be presented to you. There isn't any such message. I will not interfere with your duty to decide the facts and you may not interfere with my duty to decide the applicable law.

Before discussing the specific charges in the case I want to begin by reminding you of some basic principles that govern this case as they govern every criminal trial in the State of New Jersey. The defendant, Richard Highlander, is presumed to be innocent until proven guilty beyond a reasonable doubt. This presumption continues throughout the entire trial of the case and even into and during your deliberations, unless and until you have determined that the State has proven his guilt beyond a reasonable doubt. This burden of proof is on the State and it never shifts. It remains on the State throughout the entire trial of the case.

Even though the defendant has conceded or not disputed certain facts, the State still has the burden of satisfying each of you beyond a reasonable doubt that all the elements of the charges have been proven. No

burden of proof of any kind is imposed on a defendant. He is not obliged to prove his innocence. Unless the State has proven the crimes charged and each of the elements beyond a reasonable doubt, the defendant is entitled to an acquittal.

I have used and you have heard reference to the phrase reasonable doubt. Reasonable doubt is not a mere possible or imaginary doubt because as I'm sure you will understand, anything relating to human affairs or depending in part upon memory or oral evidence is open to some possible or imaginary doubt. A reasonable doubt is an honest and abiding uncertainty as to the guilt of the defendant existing in your minds after you have given full and impartial consideration to all of the evidence. A reasonable doubt may arise from the evidence itself or from a lack of evidence. It is a doubt that appeals to your reason and judgment, to your common sense and your experience.

I have referred to the evidence in the case. The evidence consists of the

testimony of all of the witnesses and the exhibits that I have received in evidence during the course of the trial. When you retire to begin your deliberations I will send all of the exhibits in to you for your examination. Please do not ask me to see any other exhibits that were referred to during the trial but were not received into evidence. Every exhibit that you may properly consider will be sent in to you.

One of the most crucial functions of the jury is to weigh and evaluate the evidence, the testimony and the exhibits to decide what is important and what is not, what is believable or credible and what is not, what is helpful in reaching a decision and is central to the case and what is peripheral or not very important to you in reaching your decision. What is important is what you think is important, not what the lawyers or the judge thinks is important. What is believable is what you think is believable, not what we think.

In evaluating the evidence you should keep in mind that there are

essentially two kinds of evidence, direct and circumstantial. Direct evidence is evidence that tends to establish a point in issue and usually results from one of the senses. I saw this, I did that, he said this, I heard that. Circumstantial evidence is evidence that tends to establish one fact or set of facts from which a logical conclusion or inference about the existence of another fact may be drawn. As an example, and of course there could be thousands, imagine leaving a small child alone in a room where you know there is some chocolate candy. In a few minutes you return knowing that no one has entered or left the room to find the candy gone and some chocolate on the child's face and shirt. You have no direct evidence about what happened to the candy, but from the circumstantial evidence you can draw a reasonably safe conclusion about it.

The law does not require that any fact that must be proved be established by direct or by circumstantial evidence. It may be proffered by either or by a combination of both. Often, particularly in

the case of proving a mental state, such as purposely or knowingly, circumstantial evidence may be more persuasive or satisfying than the direct evidence that is available. On the other hand circumstantial evidence should always be scrutinized carefully because it does require you to take a logical step from one fact to another and you should be sure that the conclusion you are drawing is indeed an appropriate one. In evaluating the testimony of witnesses to decide credibility and the weight to be afforded to their testimony, there are a number of techniques that you may choose -- that you may use if you choose to in reaching your decisions. You may consider the demeanor or behavior of any witness who testified. Often how someone acts will tell you as much if not more than the words they speak. You should consider the inherent believability of what they said. Did the testimony make sense? Did it have the ring of truth? Did it sound believable? Did the witnesses have the ability to see what they said they saw, to hear what they said they heard? Did any

witness have anything to gain or to lose from the testimony that was given or did any witness have nothing to gain or to lose?

The existence or absence of any interest or bias of a witness is a factor that you may consider in evaluating the testimony. Did any witness testify to you in a manner that differed from a statement that he or she gave on a prior occasion? If so do you think that the difference resulted from an honest failure or change of recollection from the stress of appearing as a witness, from a deliberate lie or evasion here in court or on the prior occasion or from any other reason? Was the inconsistency important or inconsequential? If you believe any witness in the case deliberately lied to you in an attempt to deceive you, you may in your discretion disregard the testimony you believe to be untruthful and accept the rest of the testimony of that witness or you may decide to disregard the testimony of that witness in its entirety. If there was a prior statement of any witness that differed from the testimony in court, you may accept

the testimony in court and disregard the prior statement or you may disregard the court testimony and accept the prior statement, if you believe that was the truthful statement, or you may decide that you can't decide which statement was true and you may therefore disregard both statements. If there was any explanation offered for the inconsistency, you should in all fairness consider that explanation in deciding what you believe, as not all inconsistencies necessarily result from a deliberate lie told with the intention to deceive.

You will recall that there was some evidence presented by expert testimony. As I explained to you, expert evidence is not binding on the jury. Rather it is offered to assist the jury in its fact finding function. You should consider the background, training, qualifications and experience of the expert in evaluating the conclusions or opinions about which he testified and also examine the quality and quantity of information available to him in reaching his conclusions, in reaching your

own opinions about the weight to be afforded to the testimony of any expert.

During the trial you may recall that I explained to you that in general any evidence that is presented may be considered by the jury for any purpose. Certain evidence, however, is offered and may be used only for a specific purpose. I remind you that we heard testimony that Mike Reed told Detective Teasenfitz that the defendant had stored a gun in Reed's house for a time and that this evidence may be considered by you, if you consider it at all, only for the purpose of helping you to evaluate the credibility of Reed's testimony. Also you will recall that this morning we heard testimony of Detective Teasenfitz to the effect that the defendant told Mr. and Mrs. Abruzzi of his concern about going to jail. Again that evidence may be considered by you, if you consider it at all, only for the purpose of helping you to evaluate the credibility of Mr. Abruzzi or Mrs. Abruzzi's testimony.

In addition to the other

evidence in this case you heard testimony relating to certain statements that the defendant made while in custody in South Carolina, on the way back to New Jersey and at the Margate Police Station. In addition there was evidence of other statements made by the defendant before and after April 25, 1988 to persons other than law enforcement officials. It is your function to determine whether or not such statements were actually made by the defendant, and if they were made whether such statements or any portions of them are credible. In considering whether or not the statements alledgedly made by the defendant are credible, you should take into consideration the circumstances and facts surrounding the giving of the statements as well as all other evidence in the case. If after consideration of all of the circumstances you determine that any statement was not actually made or that it was not made voluntarily by the defendant or that it was voluntarily made by the defendant but it is not credible, then you must disregard the alleged statement completely.

If you find that any statement was voluntarily made by the defendant and that it is credible, you may give such weight to that statement as you think it should be afforded in your deliberations.

There has been some testimony in the case from which you may infer that the defendant fled shortly after the alleged commission of the crime. The question of whether the defendant fled after the commission of the crime is another question of fact for your determination. If you find that the defendant, fearing that an accusation would be made against him or that he would be arrested, took refuge in flight for the purpose of evadeing the accusation or arrest, then you may if you choose consider such flight in connection with all the other evidence in the case as an indication or proof of consciousness of guilt.

With this background I want to turn now to a discussion of the specific charges in the case and a description of the specific questions that you will have to answer. As I explained to you at the outset

of the trial, each criminal charge is composed of certain parts or elements, each of which must be proved to you by the State beyond a reasonable doubt. Elements of a criminal charge consist in the main of three sorts; something that someone is said to have done, the circumstances in which the conduct took place and the mental state with which the defendant acted. In order to assist you I have prepared a jury verdict sheet which will be sent into your jury room to record your verdict. I will circulate copies of it to you now so that we can review it together and I can explain it to you. As I do, please stay with me and do not get ahead of me. If you are reading something that I am not yet explaining, you may miss something important about the question I am discussing.

The wording of the questions on the verdict sheet comes from the statutes that are involved and I have set out the questions basically in the sequence that I thought would be the most helpful to you. Except with regard to the first set of questions, however, you may consider the

issues in any order that you like. For the first group of questions it is important that you follow the sequence that I will outline for you. You will notice that for all of the questions beginning on page twelve I have alternated the answers guilty and not guilty. I did this deliberately so that no amateur psyciatrists on the jury could read any message into which one I listed first or second. When you record your verdict then, you should pay careful attention to be sure that the check mark is put in the appropriate place. First let me remind you that you must consider each of the charges separately except as I shall otherwise indicate. You may reach the same or different verdicts on the several charges; that is you may find the defendant guilty or not guilty of all of the charges or guilty of some and not guilty of others, but each charge should be considered separately, except for the first three questions on page one of the verdict sheet. It is important that you consider these questions together because you must reach one verdict that takes into consideration these

three different versions of this charge.

These charges all relate to the death of Gloria Simonelli. The first two versions of the charge are murder charges and the third is a manslaughter charge. Murder and manslaughter are defined in the law as the unlawful killing of one person by another. I will explain each of the versions and how they differ from each other. The first version of the charge, version A, is that the defendant purposely or knowingly caused the death of Gloria Simonelli by his own conduct. The phrase by his own conduct means that the defendant actively and directly participated in the killing, that his conduct was the direct and immediate cause of death. The phrase purposely means that it was the defendant's conscious object to cause the death of Gloria Simonelli. Knowingly means for the purpose of this question that the defendant was aware that what he was doing would cause death or was practically certain to cause death. In either case purposely or knowingly causing the death must be within the design or

contemplation of the defendant.

As I have already explained to you, purpose and knowledge are states of mind. The nature of the purpose or knowledge with which the defendant acted toward the decedent is a question of fact for the jury to decide. Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his purpose was to cause the death or that he knew that what he was doing would kill the victim or was practically certain to cause her death. It is within the power of the jury to find that proof of purpose or proof of knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and circumstances surrounding the conduct under investigation. Such things as the place where the act occurred, the weapon used, the location, number and nature of wounds

inflicted and all that was done or said by the defendant preceding, connected with or immediately succeeding the events leading to the death of the decedent are among the circumstances to be considered.

Some of the evidence introduced in this case is circumstantial. As I have already explained to you circumstantial evidence may be sufficient to convict. Indeed in many instances it may be more certain, satisfying and persuasive than direct evidence. Circumstantial evidence of course should be scrutinized carefully, but a conviction may be based on circumstantial evidence alone provided you are convinced of the defendant's guilt beyond a reasonable doubt. The essential determination for you to make in regard to the first version of the charge is whether the defendant committed the killing purposely or knowingly by his own conduct and that he intended to cause the death of Gloria Simonelli.

The State is not required to prove a motive. If the State has proved each of these elements of the offense beyond a

reasonable doubt, the defendant must be found guilty of this charge, regardless of his motive or lack of motive. If the State has proved a motive, you may of course consider that insofar as it gives meaning to the other circumstances.

A homicide or killing with a deadly weapon such as a gun in itself would permit you to draw an inference that the defendant's purpose was to take life. In your deliberations you may consider the weapon used and the manner and circumstances of the killing and if you are satisfied beyond a reasonable doubt that the defendant shot and killed the decedent with a gun, you may draw an inference from the weapon used, that is the gun, and from the manner and circumstances of the killing as to the defendant's purpose or knowledge. If after a consideration of all of the evidence you are convinced beyond a reasonable doubt that the defendant either purposely or knowingly caused the death of the victim by his on own conduct, then your verdict should be guilty. If, however, after a consideration of all of

the evidence you find that the State has failed to prove each and every element of the charge beyond a reasonable doubt, your verdict should be not guilty.

The second version of the charge, version B, also charges the defendant with the murder of Gloria Simonelli in that he purposely or knowingly caused serious bodily injury resulting in her death. Much of what I have already explained to you applies to this charge as well. Purposely and knowingly have the same meanings. That is a person who commits a killing does so purposely when it is his conscious object to cause serious bodily injury resulting in death and he does so knowingly when he is aware that what he is doing will cause serious bodily injury resulting in death or is practically certain to do so. In either case purposely or knowingly causing the serious bodily injury must be within the design or contemplation of the defendant.

In this charge what the State must prove is that the defendant purposely or knowingly caused serious bodily injury to

Gloria Simonelli, that it was his intention to do so and that the serious bodily injury resulted in her death. Bodily injury means any impairment of physical condition. Serious bodily injury means bodily injury which creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. Again, as in the first version, the nature of the defendant's purpose or knowledge is a question of fact for the jury to decide and you may consider all of the circumstances that I have outlined for you in the first version of the charge.

The essential kind of difference between these two versions of the murder charge is whether you find that it was the defendant's intention to kill or cause the death of Gloria Simonelli or whether you find that it was his intention to cause her serious bodily injury which resulted in her death. Otherwise the elements of these charges are the same and all of the instructions that apply to the first version

apply as well to the second. As you can see then, assuming that the State has proved each of the elements of these versions to your satisfaction beyond a reasonable doubt, you would have to decide from all of the evidence whether or not it was the defendant's intention to cause death. Depending on your decision you would find the defendant guilty of one or the other of the two versions of the murder charge. He could not be convicted of both.

If, of course, the State has failed to prove any one or more of the elements of either version beyond a reasonable doubt, the defendant should be acquitted of both versions.

Before deciding on either of these versions, however, you must also consider the third charge, listed on your verdicts sheet as C. This charge is in one sense a combination of the first two charges in that it alleges that the defendant purposely or knowingly caused the death of Gloria Simonelli or that he purposely or knowingly caused serious bodily injury which

resulted in her death. These elements have exactly the same meanings that I have already described. Here, however, there is another element; that the defendant acted in the heat of passion resulting from a reasonable provocation.

In order to satisfy you that the defendant is guilty of murder and not this version of the charge, which is manslaughter, the State must establish beyond a reasonable doubt that the defendant did not act in the heat of passion resulting from a reasonable provocation. A homicide which would otherwise be murder is manslaughter when the killing is committed in the heat of passion resulting from a reasonable provocation. In this connection you must keep in mind that provocation in law has a fixed meaning. If there was provocation of such character as is recognized by the law and it was acted upon under circumstances which the law recognizes, then the crime is manslaughter.

Now, what does the law recognize as provocation which would permit

the jury to find that the offense is manslaughter rather than murder? First, mere words alone or looks or gestures, no matter how abusive, threatening or insulting, are never such provocation. Provocation in law must be such as in the opinion of the jury would probably throw the mind of an average man of ordinary self control into a state of uncontrolled rage or anger. The provocation must be so gross as to cause the ordinary reasonable man to lose self control and to use violence with fatal results, and the defendant must in fact have been deprived of self control under the stress of such provocation and must have committed the crime while so deprived. The provocation must be of such character and so close upon the act of killing that for the moment the defendant could not be considered as the master of his own understanding. If such an interval of time elapsed between the provocation and the killing as is reasonably sufficient for reason to resume control, the offense may not then be considered reduced to manslaughter.

Whether the provocation was

sufficient or not and whether the time which elapsed between the provocation given and the act of killing was sufficient or not for the accused to subdue or control his emotions are questions of fact to be determined by the jury on consideration of all of the evidence in the case. If you are satisfied beyond a reasonable doubt that the defendant purposely or knowingly caused the death of Gloria Simonelli or purposely or knowingly caused serious bodily injury resulting in her death and you are further satisfied beyond a reasonable doubt that he did not act in the heat of passion resulting from a reasonable provocation, then you must find the defendant guilty of one or the other of the two versions of the murder charge. If on the other hand you are satisfied beyond a reasonable doubt that the defendant purposely or knowingly caused the death of Gloria Simonelli or purposely or knowingly caused serious bodily injury resulting in her death and you have a reasonable doubt about whether he did so in the heat of passion resulting from a reasonable provocation or you believe

that he did indeed act in the heat of passion resulting from a reasonable provocation, then you must find the defendant guilty of manslaughter as alleged in charge C.

As you can clearly see then, the charges in A, B and C are mutually exclusive. If the defendant is guilty of any one of them he can be found guilty of only that one charge. He can not be found guilty of more than one. He may, however, be found not guilty of all of them if you are satisfied that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the charges. In that regard I again direct your attention to one of the elements that is alleged in each of the versions of this charge, and that is that the defendant acted purposely or knowingly. As you have heard, the State must prove this element beyond a reasonable doubt no matter which of these three versions of the charge is involved.

There is evidence in this case concerning the use by the defendant of alcohol or drugs prior to or on the day in

question, April 25, 1988. Generally a defendant is not relieved of criminal responsibility because he is found to have acted under the influence of an intoxicant such as alcohol or drugs. The general assumption is that every person is normal and is possessed of ordinary faculties. The State need not prove that the defendant was sober.

Intoxication under our law means a disturbance of mental or physical capacities resulting from the introduction of substances into the body. If you have determined that there is some evidence of the defendant's intoxication, the State must prove beyond a reasonable doubt that such intoxication did not render the defendant incapable of acting purposely or knowingly. You may consider any evidence relating to the defendant's consumption of alcoholic beverages or drugs in determining whether he was intoxicated to such a degree that he was incapable of acting purposely or knowingly. In considering the question of intoxication you should carefully distinguish between on

the one hand the condition of a person's mind which is merely affected or excited by intoxicating drink or drugs and yet is still capable of acting with purpose or knowledge, and on the other hand the condition in which a person's mental faculties are so prostrated as to render him incapable of acting with the purpose or knowledge required to commit the crime charged. The mere intake of even large quantities of alcohol or drugs will not suffice.

Moreover, the defense is not established solely by showing that the defendant might not have committed the crime had he been sober. What is required is that there is evidence of such great prostration of the faculties that the required mental state was totally lacking; that is that the defendant was so intoxicated that he did not have the purpose or knowledge to commit the crime.

If you have determined that the defendant was intoxicated, you may then consider the degree of intoxication together with all of the other evidence in determining

whether or not the defendant was capable of acting with the purpose or knowledge to commit the crime charged. You may, if you choose, consider any evidence or the lack of any evidence about the quantity of intoxicant consumed, the period of time involved, the defendant's conduct as perceived by others, that is what he said, how he said it, how he appeared, how he acted, how his coordination or lack thereof manifested itself, any odor of alcohol or other intoxicating substance or other similar indications of intoxication. You should keep in mind that the defendant does not have to prove that he lacked the ability to act with the purpose or knowledge required. The State must prove beyond a reasonable doubt that the defendant had the ability to act with the purpose or knowledge required, whether or not he was intoxicated.

If, after considering all the evidence, you have a reasonable doubt as to whether the defendant's intoxication was such as to render him incapable of acting purposely or knowingly, then you must acquit him of all of the three versions of this

charge defined in questions A, B and C. If, however, the State has proven to you beyond a reasonable doubt that the defense does not apply and the State has proven beyond a reasonable doubt all of the other elements of the charge, then you must find the defendant guilty of the appropriate version of this charge, that is one of the three alternatives listed as A, B or C.

By way of summary then, as to the first group of charges I direct your attention to the verdict sheet on page one. After considering all three versions of the offense and the issue of intoxication, you are to determine whether the State has proved any one of the three versions of this charge beyond a reasonable doubt. If so, put a check on the appropriate line. Remember that the defendant may be found guilty of only one of the three versions. If the State has not proven any of the three versions beyond a reasonable doubt, put a check on the line that says not guilty.

Now, please look at the instructions on the bottom of the page. You

will notice that I have advised you that if you determine that the defendant is guilty of version A, then the jury will decide in a separate proceeding whether or not the death penalty is the fitting and appropriate punishment in this case and is therefore the sentence that the Court will impose. This is the only charge that could result in the death penalty. If the defendant is convicted of any other charge, I will determine the appropriate sentence which will be a term of imprisonment that I will set.

I have further advised you that if you have found the defendant guilty of any one of the three versions of this charge, you should omit the next two questions on page two and you should proceed directly to question three. If on the other hand you have found the defendant not guilty of all of the three versions of this charge, you should proceed to question 2A on the top of page two. Let us turn now to that question.

Question 2A is called aggravated manslaughter. This is a different kind of manslaughter from the passion

provocation type of manslaughter. It alleges that the defendant recklessly caused the death of Gloria Simonelli under circumstances manifesting extreme indifference to human life. The State must prove beyond a reasonable doubt these three elements: First, that the defendant caused the death of Gloria Simonelli, second, that he did so recklessly, and third, that he did so under circumstances manifesting extreme indifference to human life.

With respect to the first element, in order to find that the defendant caused Gloria Simonelli's death, you must find that she would not have died but for the defendant's conduct. The second element that the State must prove is that the defendant acted recklessly. This mental state is substantially different of course from the mental states of purpose and knowledge that were involved in the last group of questions. In order to find that the defendant acted recklessly you must find that he was aware of and consciously disregarded a substantial and unjustifiable risk that death

would result from his conduct. The risk must be of such a nature and degree that considering the nature and purpose of the defendant's conduct and the circumstances known to him, his disregard of that risk was a gross deviation from the standard of conduct that a reasonable person would follow in the same situation. In other words, you must find that the defendant was aware of and consciously disregarded the risk of causing death.

If you find that the defendant was aware of and disregarded the risk of causing death, you must determine whether that risk that he disregarded was substantial and unjustifiable. In doing so you must consider the nature and purpose of the defendant's conduct and the circumstances known to him and you must determine whether in light of those factors his disregard of that risk was a gross deviation from the conduct of a reasonable person in the defendant's situation.

In order to find the third element of this charge you must find that the

defendant acted under circumstances that manifest or show an extreme indifference to human life. The phrase under circumstances manifesting extreme indifference to human life does not focus on the defendant's state of mind, but rather on the circumstances under which you find that he acted. The State must prove that the defendant acted in a way that showed that he was indifferent about whether Gloria Simonelli lived or died; that is that he acted in a way which showed that he did not care that someone would be killed. With respect to this charge, the defendant must have acted as he did under circumstances involving a substantial probability of death.

You will remember that I explained that intoxication of the defendant may be such as would prevent him from acting purposely or knowingly. When recklessness is the relevant element of the charge, however, if the defendant was by reason of intoxication unaware of a risk that he would have been aware of if he were sober, that unawareness is immaterial and he may still be

found to have acted recklessly.

In sum then, if you are satisfied beyond a reasonable doubt that the defendant recklessly caused the death of Gloria Simonelli under circumstances manifesting extreme indifference to human life, you should place a check on the verdict sheet on the line marked guilty. If you are not satisfied that the State has proven each of the three elements of this charge beyond a reasonable doubt, you should place a check on the verdict sheet on the line marked not guilty.

Now, look at the instructions after question 2A on the verdict sheet. If you have decided that the defendant is guilty of this charge, you would omit the next question and proceed directly to question three. If on the other hand you have decided that the defendant is not guilty of this charge, you must answer question 2B.

Question 2B is very similar to question 2A insofar as it charges that the defendant recklessly caused the death of Gloria Simonelli. These terms have exactly

the same meaning as they did in the last question. The difference of course is that in this question which alleges the crime of manslaughter, the State need not prove the element of the surrounding circumstances manifesting extreme indifference to human life. In this question there are two elements for the State to establish beyond a reasonable doubt; that the defendant caused the death of Gloria Simonelli and that he acted recklessly. If you are satisfied beyond a reasonable doubt that the State has proven both elements, place a check on the line marked guilty. If you are not so satisfied, place a check on the line marked not guilty.

Moving then to question three, this charge alleges that the defendant attempted to murder Patrick Sullivan. In wording this question I have used the legal definition of the word attempt. That is, an attempt is an act which under the circumstances, as a reasonable person would believe them to be, is an act constituting a substantial step in a course of conduct

planned to culminate in the commission of the crime of murder. In order to find the defendant guilty of an attempted murder, you would have to be satisfied beyond a reasonable doubt that the State has established two elements. First, the defendant must have acted purposely, that is it was his conscious object to commit the crime of murder. Second, he must have done something which under the circumstances as a reasonable person would believe them to be was an act constituting a substantial step in a plan to commit the murder of Patrick Sullivan. The step taken must be one which was strongly corroborative of the defendant's purpose to kill Sullivan. He must be shown to have had a firmness of purpose and the step taken must be substantial and not merely preparation for the crime.

For purposes of this question the crime of murder means causing the death of another person. Accordingly, if you are satisfied beyond a reasonable doubt that the defendant purposely attempted to kill Patrick Sullivan, place a check on the line marked

guilty. If you are not so satisfied, place a check on the line marked not guilty.

The next question, number 4A on the top of page three, is somewhat similar to the charge of attempted murder that I have just discussed. This charge is called aggravated assault and it alleges that the defendant attempted to cause serious bodily injury to Patrick Sullivan. By now you should be familiar with each of the elements of this charge. The State must establish that there was an attempt, that is a substantial step in the plan to commit the crime of aggravated assault, that it was committed purposely, that is that it was the defendant's conscious object to cause that crime to be committed and that the object of the defendant's conduct was the causing of serious bodily injury to Sullivan. I remind you that serious bodily injury means bodily injury which creates a substantial risk of death. If you are satisfied that the State has proven each of these elements beyond a reasonable doubt, place a check on the line marked guilty. If not, place a check on the

line marked not guilty.

Question 4B is quite similar and also charges an aggravated assault. In this charge the defendant is alleged to have attempted to cause bodily injury to Sullivan with a deadly weapon. The definition of attempt is of course the same as I have discussed in the last two charges. The definition of bodily injury is any physical pain or impairment of physical condition and is of course different from serious bodily injury as I have previously defined that term. The reference to a deadly weapon means any firearm which in the manner it is used is known to be capable of producing death or serious bodily injury. Accordingly, if you are satisfied beyond a reasonable doubt that the State has proven each of these elements, place a check on the line marked guilty. If not, place a check on the line marked not guilty.

Now, again please look at the instructions after question 4B. If you have decided that the defendant is guilty of either aggravated assault upon Patrick

Sullivan, the charge at question 4A or the one at question 4B or both of them, you should omit the next question, 4C, and proceed directly to question five. If you have decided that the defendant is not guilty of both charges, you should answer question 4C. This question also charges an aggravated assault upon Patrick Sullivan and it alleges that the defendant knowingly pointed a firearm at Sullivan or in his direction under circumstances manifesting extreme indifference to the value of human life. Although the wording is slightly different, there is the same concept which I described a few moments ago.

Here the State must prove that the defendant had a firearm, which is defined in the law as including any handgun, which the defendant knowingly pointed at Sullivan or in his direction. You will remember that the word knowingly means that the defendant was aware of the circumstances and of his conduct, that is that he knew that he had the gun and that he was pointing it at or in the direction of Patrick Sullivan.

The meaning of the phrase under circumstances manifesting extreme indifference to the value of human life means again that you should examine the circumstances surrounding the defendant's conduct to determine if the defendant acted in a way that showed that he was indifferent to whether Sullivan lived or died if he acted in a way which showed that he did not care that someone would be killed. Once again if the State has proven each of these elements beyond a reasonable doubt, place a check on the line marked guilty, and if not, place a check on the line marked not guilty.

The next two charges, questions five and six, are somewhat related to each other. Each one alleges a weapons offense or weapons violation, but of course the charges are not exactly the same. In question five you are asked to decide whether the defendant knowingly possessed a firearm with a purpose to use it unlawfully against the person of Gloria Simonelli. To prove this charge the State must establish the elements of possession, knowledge and purpose. As to

possession, the State must prove to your satisfaction that the defendant possessed a firearm which, as I have just told you, is defined in the law as including any handgun. Possession means the custody or control of an item accompanied by a knowledge of its presence and its character. In other words, the State must show that he had the gun, that he knew that he had it and that he knew that it was a handgun. Then the State must show that the defendant had the purpose or conscious object to use the handgun unlawfully against the person of Gloria Simonelli. Once again proof of purpose involves a state of mind requiring you to examine all the circumstantial evidence. If you are satisfied beyond a reasonable doubt as to each of the elements of this charge, place a check on the line marked guilty. If not, place a check on the line marked not guilty.

Question six alleges that the defendant knowingly possessed a handgun without first having obtained a permit to carry it. Our law prohibits anyone from

carrying a handgun without applying for and receiving a permit from the court to do so. The definitions of the words knowingly and possession are the same as in the last question. With regard to the permit, while the State always has the burden of proving each element of each charge, the law permits you to presume that a person who does not establish that he has the necessary permit does not in fact have it. Accordingly, if you are satisfied beyond a reasonable doubt that the defendant knowingly possessed a handgun without a permit to carry it, place a check on the line marked guilty. If you are not so satisfied, place a check on the line marked not guilty.

The last charge is called contempt and alleges that the defendant purposely or knowingly violated the terms of a judicial order entered under the terms of the Prevention of Domestic Violence Act. Here the State must show that there was an outstanding order entered by the court under the provisions of that particular law, that the defendant knew of the order and what it

said, that is he knew that the order had been entered by the court and he knew what he was to do and not to do under the order and that he purposely or knowingly violated the terms of that order. Again the terms purposely and knowingly have the same meanings I have used before, purposely meaning that it was the defendant's deliberate or conscious object to violate the order and knowingly meaning that he was aware that he was doing so. If the State has proven this charge and each of the elements beyond a reasonable doubt, place a check on the line marked guilty. If not, place a check on the line marked not guilty.

As you can see, the process of examining each of these charges is somewhat involved and complicated and it will require your careful attention and participation in your deliberations. You must focus your efforts on the task of understanding all of the elements that are present in each of the charges and then analyzing carefully all of the evidence in the case to determine if the State has proven the elements to you beyond a reasonable doubt.

As you may remember from the beginning of the trial we select 16 jurors at the outset of the case in order to assure that we will finish with two jurors who can deliberate and return a verdict. In just a moment I will ask the clerk to select four of you to serve as alternate jurors. Those who are selected will remain seated for a few minutes and I will then ask you to recess to another room in the courthouse to await the jury's determinations. In the event that your services will be required during deliberations, we will of course let you know and we will keep you advised of any and all developments in the trial. The remaining 12 jurors will then be excused to deliberate upon the verdict.

The verdict of the jury must represent the considered judgment and views of each juror individually, but in order to return a verdict it is necessary that each juror agree on the answer to each and every question. Your verdict must be unanimous. It is your duty as jurors to deliberate together and to consult with one another with

a view to reaching an agreement if you can do so without violence to your individual judgments. Each of you must decide this case for yourself, but you should do so only after an impartial and thorough consideration of all of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views and to change your mind if you become convinced that you were wrong. On the other hand, you are not required to surrender your honest belief as to the weight or sufficiency of the evidence solely because of the views of your fellow jurors or for the mere purpose of returning a verdict. You are not partisans. At this stage of the trial you become the judges, the judges of the facts. Your sole interest in this case is to determine the truth and to return a fair and an honest verdict without any bias, passion, prejudice or sympathy, for or against anyone.

Now, if you'll excuse me a moment, I will need to confer briefly with counsel.

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: All right. First on the charge, Mr. Talasnik.

MR. TALASNIK: No objections, thank you.

THE COURT: Mr. Davis.

MR. DAVIS: I have nothing, but Michael will speak.

MR. PRESTON: We renew the objections that we made prior. No need to restate them. Additionally, in several occasions from the reading it became apparent that on several occasions you used the word must with regard to a finding of guilt with respect to the defendant. I think that the circumstances and the reading of the charge to the jury creates clear problems with State versus Ragland and I could point out the specific instances in the charge where that occurred. I don't think that you can instruct the jury that they must find the defendant guilty or must reach a conclusion adverse to the defendant.

Secondly, there was at one of

those points where you have on page four of the charge discussing the statement by the defendant, you indicated that if they found any part of the statement to be not credible, they had to disregard the statement completely. It was totally contrary to what you formerly read with respect to the false in one, false in all, that they could discard it completely or they could accept some or accept all. There was no provision that they could accept only part.

THE COURT: I'll correct that.

MR. PRESTON: One of the instances in which the word must was used was at that point, and later on it occurred on page seven, in the middle of the page, the essential determination for you to make in regard to the first version, in the middle of that paragraph, the State is not required to prove a motive, defendant must be found guilty of this charge, so there were several instances. I missed the last notation --

THE COURT: I'm aware of them. For the record I'll correct the point you made about the statement, I think you're

right. On Ragland, I disagree. I don't think I'm afoul of Ragland. I think I have made it clear that the jury has to evaluate the State's proofs in determining whether the State has met the burden of proof in proving each of the elements beyond a reasonable doubt, and if they have, the jury is to find the defendant guilty. If they haven't --

MR. PRESTON: I think "is to" is acceptable language, indicating that it is proper for them, indicating that they should, but indicating that they have handcuffs on, that is what Ragland addressed, the problem of the handcuffs.

THE COURT: I will change the word "must" to the word "is to." Anything else?

MR. PRESTON: That's it.

THE COURT: It's ten after three, I will make the decision, but what do you recommend, gentlemen?

MR. PRESTON: I think they should get started. They have preliminary homework to do in the receiving of evidence.

MR. TALASNIK: One other matter

that occurs to me and it may be that it's better addressed with respect to the jury sheet. The jury sheet has an asterisk at the bottom indicating that an A verdict means that they will determine that death is fitting or appropriate punishment. There's no indication or reminder, if you will, that that gets done at a separate proceeding.

THE COURT: There was in the charge.

MR. TALASNIK: There was in the charge, I know. I just wonder --

THE COURT: I'm not going to change the verdict sheet to that effect. I did say that in the charge.

(The sidebar conference was concluded).

THE COURT: Ladies and gentlemen, just a couple of supplements and partial corrections to the remarks that I have just given you. First in connection with the comments that I made about your consideration of any statements made by the defendant, I told you that you must determine whether, first, you believe the statements

were made, second, if they were made were they voluntary, and third, if they were voluntarily made were they credible, and if you found that they were voluntarily made and believable, then you may and should consider them in connection with all of the other evidence. If you find that any statement or part of any statement was not voluntarily made or was not credible, then you should disregard that part of that statement or all of that statement if you find that it fits into that category. Similarly, if you should find that any statement by the defendant was made and voluntarily made and that part of it is true and part of it is not true, you may in your discretion accept the part that you believe to be true and disregard the part that you believe not to be true, or just as you would with the statement of any other witness, you may, if you choose, disregard all of that statement if you find part or all not to be true. What you do under the circumstances is for you to determine.

Lastly, you will recall that throughout my remarks I outlined for you the

several elements of each of the charges and I told you that if the State had failed to prove any one or more of those elements to you beyond a reasonable doubt, you should find the defendant not guilty of that charge. I remind you of that and also that if the State does prove to your satisfaction beyond a reasonable doubt all of the elements of any charge, then you should find the defendant guilty of any such charge. I believe I used the word must in my remarks and I correct that to the word should.

Okay, anything further before we select the alternates, Mr. Talasnik?

MR. TALASNIK: No, thank you, Your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: No, Your Honor.

THE COURT: Mr. Preston.

MR. PRESTON: No, Judge.

THE COURT: All right. I will ask the clerk the call the alternates by lot. The first one called will serve as the first alternate, the second will be the second, et cetera. I apologize in advance to

whichever of the fourteen of you will wind-up as having served by waiting at the end, but I'm sure you all understand the necessity of our proceeding in this fashion. I'm happy that we didn't at least at this point need to make these arrangements, although as you know the case isn't finished yet, we may yet have to. All right.

THE CLERK: Alternate number one, seat number eight, Sherri Carmen.

THE COURT: Miss Carmen, seat number eight, you'll serve as the first alternate. Just remain where you are.

THE CLERK: Alternate number two, seat number fourteen, Lannie Allmond.

THE COURT: Ms. Allmond, you'll serve as the second alternate.

THE CLERK: Alternate number three, seat number nine, Patricia Wright,.

THE COURT: Ms. Wright, happy birthday. You'll serve as the third alternate.

THE CLERK: Alternate number four, juror number thirteen, Howard Huetel.

THE COURT: Mr. Huetel, you'll

serve as the fourth alternate. When the jury recesses in just a moment, I will ask the fourteen of you to go with the sheriff and he'll tell you where to go. We'll of course keep you advised and you'll know any time we come back into the courtroom you will come back as well and be kept fully informed about everything that's happening and what's going on. It is also possible that at any stage of the proceedings that yet remain, your services may yet be necessary to serve as jurors in deliberations. I therefore remind the four of you understanding as I do so how difficult it is that you may find lots of things to talk about while you are together, but anything involving the case can't be among them because you may yet be called upon to join the deliberating jury as a part of this decision, so you must hold out, the four of you, a little longer.

Mr. DePietro, by reason of the fact that fate has placed you in seat number one, I'm going to ask you to serve as the foreperson of the jury. In that respect when the evidence is sent into the jury, I will

send in as well one copy of the jury verdict form that you have just seen as we've discussed it. I will ask you to keep custody of the jury verdict form. I will provide you with an envelope to keep it in. On that form you are to keep a record of the jury's deliberations by placing an X or a check on the appropriate line as the jury reaches a unanimous determination as to each question.

In the event that you need my assistance or collectively have any question that you wish to ask of me, the sheriff's officer will provide you with paper and pencil for that purpose. When the jury deliberations have been completed and a unanimous verdict has been reached I will ask you, Mr. DePietro, to have the jury verdict form with you, return to the courtroom, at which time I will ask you if the jury has returned a unanimous verdict in this case and if you indicate to me that it has, I will then ask you to present the verdict form to me in the envelope through the sheriff's officer. I will as soon as you retire go over the evidence with the lawyers and within

a minute or two we will send all of the evidence into the jury room with you. It will be with you in the jury room whenever you're in there and obviously you're to keep care of it.

With respect to the tape, as you heard it's my understanding that it has been made impossible to erase but takes some care with respect to the machine, so that if you're going to play it you know how to do it.

One last word. I am mindful of the fact that it's 3:30 in the afternoon or will be by the time you get in there just about and I ask you to trust me to worry about the clock and your needs. Obviously at this point we do not know and you do not know the kind of time and effort that will be required. I do not want you to worry about the clock, I do not want you to worry about dinner. When the dinner hour arrives, in my view if we haven't heard from you, I will in essence make a judgment as to whether I wish to have a dinner brought in here and have you fed dinner here during your deliberations and

to continue through the dinner hour or whether I wish to go to a certain point and recess you for the evening and ask you to come back tomorrow. I will make that decision. I may or may not consult with you when I do it. I will consult with the attorneys. I don't want you to feel concerned about it. Let me worry about that. You devote whatever time and effort is necessary to do justice to the parties and to yourselves as jurors.

Would you be good enough to swear in the sheriff's officers, please.

(Jury attendants sworn).

THE COURT: Ladies and gentlemen, you may retire to deliberate upon your verdict and the alternates may retire to accompany the sheriff's officer, I believe, downstairs.

(Jury retires to deliberate at 3:23 p.m.)

THE COURT: Gentlemen, the record will reflect that the jury retired at 3:23 p.m. by my watch. Okay, I would ask you to remain available. We'll go through the

evidence briefly. At about five o'clock I will confer to you to decide what we want to do at that point if we haven't heard from the jury with respect to what we want to do for dinner. My records reflect the following exhibits have been received in evidence, in each instance a States's exhibit. Three, five, seven, eight, nine and 10, 13 through 26 inclusive, 31, 32, 33, 36, 37, 38, 40 through 47 inclusive and 49 and 50. Are those your understandings, gentlemen?

MR. TALASNIK: Yes, Your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: Yes.

THE COURT: The exhibits and the verdict sheet will be sent into the jury. I would like to indicate for the record my view with respect to, gentlemen, Mr. Talasnik and Mr. Davis, I think that each of you, and Mr. Preston to the extent that you have participated so far, have handled this matter in an exceptionally capable and professional fashion for which I express my appreciation. All right, thank you.

(Whereupon a recess is taken).

THE COURT: Counsel, I was advised at 7:10 that the jury had completed deliberations. Let me indicate for the record that I had advised counsel informally during the afternoon at approximately five o'clock I arranged for dinner to be ordered. Dinner was delivered to the jury in the deliberation room at approximately 6:25. Just after six o'clock, a couple of minutes after, I don't know if I mentioned this to defense counsel, I got a message from the jury that they were having difficulty hearing the tape and wished the assistance of the amplifier that had been used in court. I called Mr. Talasnik who delivered to the sheriff the amplifier. The sheriff took the amplifier into the jury room and presumably they used it. I think that's all that I have to report. Please have the alternates brought in, let them sit in the first row over there and then bring the jury in.

(Alternates returned to the courtroom at 7:22 p.m.)

THE COURT: Miss Carmen, Ms. Allmond, Ms. Wright and Mr. Huetel, you may

be seated. The jury has apparently reached a verdict, which you're about to hear, and I will then have further comments for you at that time.

(The jury returns to the courtroom at 7:23 p.m.)

THE COURT: All right. Ladies and gentlemen, Mr. DePietro, the sheriff's officer has advised me that the jury has completed deliberations. Has the jury reached a unanimous verdict with respect to the matter?

THE FOREMAN: Yes, Your Honor.

THE COURT: Would you be good enough to hand it to the sheriff. Thank you, sir. Mr. DiPietro, I notice on the verdict sheet that there is no verdict recorded for one of the questions. I don't know if that's an oversight and that the jury has in fact reached a verdict on that question or that it is not. I will return the verdict sheet to you and address your attention to question 4A at the top and ask you, sir, whether the jury has in fact reached a verdict with respect to that question or it has not.

THE FOREMAN: Your Honor, as far as that question four, we thought that if we checked one of them, we only had to check one or the other.

THE COURT: Okay, I understand that question or that point. That's what I suspected. That is not accurate. With respect to that question, you are required to examine both questions 4A and 4B, reach separate verdicts, whether the same verdict or different verdicts, but nevertheless to look at both of those charges because they were both charged.

THE FOREMAN: Okay, we misunderstood what it meant and we did not vote on that one.

THE COURT: Okay, if you will have a seat for just a moment and hold on to that, let me address counsel for a moment and I'll be right back.

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: Gentlemen, the jury has returned a form that responds to all of the questions in conformity with the Court's

instructions, except that there is as you heard no response given for the reason he has just indicated to question 4A. My question is what do you choose to have me do as between the alternatives of sending the jury back and completing its deliberations or receiving what I guess would be called the partial verdict? Mr. Talasnik.

MR. TALASNIK: I'd like to receive the partial verdict.

THE COURT: What do you propose then to do with respect to the question at 4A?

MR. TALASNIK: Well, it kind of depends on the result.

THE COURT: I understand. What do you want to do, Mr. Davis?

MR. DAVIS: I'll accept it as is, Judge.

THE COURT: And what to you propose to do about 4A?

MR. PRESTON: Let's see what Mr. Talasnik wants to do when he hears the result. Maybe whatever we say might be moot.

MR. TALASNIK: Well, that's the

point. I don't know whether it's an essential disposition or not. I won't know until I hear the result on the other counts. If it is felt to be an essential disposition, then I would request that the jury be returned to deliberate on that count.

THE COURT: Mr. Davis.

MR. DAVIS: We'll go along with that, Judge.

THE COURT: You will not object if in fact after I take the verdict that I have, if Mr. Talasnik requests me to do so, that I ask the jury to return a verdict on that question?

MR. PRESTON: No, I don't think there's any difficulty between doing it then and doing it now.

THE COURT: All right. I'll receive the partial verdict.

(The sidebar conference was concluded).

THE COURT: Ladies and gentlemen, the attorneys and I have discussed the matter and have determined to receive what I will for legal purposes call the

partial verdict. I will have further instructions for you with respect to question 4A momentarily.

Counsel, with respect to the verdict sheet, the jury has returned the following verdict. Question number one, guilty of A, question 2A and 2B not answered, question three not guilty, question 4A not answered, question 4B guilty, 4C not answered, question five guilty, question six guilty, question seven guilty.

Now, ladies and gentlemen, before I address any question respecting the one question there that is not answered other than the ones that are not answered by reason of your verdict, I am going to direct the clerk to poll the jury. That means that the clerk will call your name one by one. As she does so, I direct you that you will answer only yes or no to the following question. Is the verdict that I have just read the way that you voted on your last ballot.

(The jury was polled by the clerk, with each juror individually responding in the affirmative.)

THE COURT: All right. Thank you, ladies and gentlemen.

THE COURT: Excuse me again just a moment.

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: Mr. Talasnik, as to the aggravated assault, which I understand I think from my recollection is a second degree aggravated assault.

MR. TALASNIK: Your Honor, I would wish for the jury to consider that count and ask that they be returned to the deliberation room so that that count can be addressed.

THE COURT: All right. I will do that and while they are out we will discuss what happens next.

(The sidebar conference was concluded).

THE COURT: Mr. DePietro, I'm going to return to you in the envelope the verdict form. I'm going to ask you, ladies and gentlemen, to retire to the jury room and to continue your deliberations with respect

to question 4A, which as your foreman has indicated to me you mistakenly thought you didn't have to answer if you answered the other one.

In your deliberations you should examine all of the evidence that you recall and make such determination on that evidence as you deem appropriate, again reminding you that the State must prove each of the elements of that charge to your satisfaction beyond a reasonable doubt if you are to find the defendant guilty. If you would like to re-examine any of the exhibits or documents or other portions of the evidence in connection with that question, if you will advise the sheriff we will supply you with whatever it is that you would like to see. As soon as you have completed your determinations with respect to that question, please advise and we will return and take the completion of the verdict. All right, thank you.

(Jury retired at 7:32).

THE COURT: I would ask the alternates to stay right here in the

auxiliary room because I will have further instructions for you at that time. Thank you.

(Alternates leave the courtroom).

THE COURT: Gentlemen, on the partial jury verdict as it has been thus far received, with respect to the first count of the indictment charging violation of 2C:11-3a(1) and 3a(2), I will enter a judgment of conviction against the defendant, Richard Highlander, under the provisions of 2C:11-3a(1), purposely or knowingly causing the death of Gloria Simonelli by his own conduct.

With respect to the second count, a charged violation of 2C:39-4a, possession of a weapon for unlawful purposes, judgment of conviction against the defendant Richard Highlander will enter on the jury verdict. On the third count NJSA 2C:29-9b, contempt, judgment of conviction against the defendant will enter on the jury verdict. On the fourth count, attempted murder of Patrick Sullivan contrary to 2C:11-3a, judgment of

acquittal in favor of the defendant Richard Highlander will be entered. On the sixth count, the aggravated assault contrary to 2C:2-1b(2), which I believe is the third degree aggravated assault, judgment of conviction against the defendant Richard Highlander will be entered on the jury verdict, and on the seventh count, 2C:39-5b, unlawful possession of a weapon without a permit, judgment of conviction against the defendant Richard Highlander will be entered on the jury verdict.

I will later address at the appropriate time any questions relating to merger. The record will reflect that it is now approximately 7:32, I sent the jury out of the room however long ago this took me to say, which is three or four minutes at the latest. I understand they are now ready. Ask the alternates to return and then the jury.

(Alternates returned to the courtroom).

THE COURT: Ladies and gentleman, the jury has advised that they

have reached a verdict on the last count.

(Jury returned with a verdict at 7:36 p.m.)

THE COURT: All right. Ladies and gentlemen, Mr. DePietro, has the jury reached a unanimous determination on the remaining count.

THE FOREMAN: They have, Your Honor.

THE COURT: All right. You may return the verdict sheet. Thank you, sir. Counsel, question 4A has been answered not guilty. Anything further before I excuse the jury for the evening, gentlemen?

MR. TALASNIK: I believe Your Honor wanted to set a schedule.

THE COURT: Yes. Okay, is there anything else -- well, before I set the schedule, anything else that we need hear?

MR. DAVIS: I have nothing.

THE COURT: Mr. Preston.

MR. PRESTON: No.

THE COURT: All right. Ladies and gentlemen, and I include specifically the alternates in the matter, as a result of the

jury verdict in this matter additional proceedings will be required as you know. I will ask you to return Friday morning at nine o'clock for the commencement of those proceedings. We will proceed Friday through most of the day during the day. It is my expectation we will not complete the proceedings on Friday and that we will need Monday and possibly some of Tuesday so for your own scheduling purposes you should budget those three days. It may take a little longer, may take a little shorter, but that is my best guess at the moment. Again I will tell you as I have whatever I know of the schedule whenever I know it. The alternate jurors who have been designated as such are included in this process. You will in the second phase of these proceedings remain available and participate as jurors in connection with the matter and until further developments, and I will bring you up to date on that at the appropriate time.

Now, one last word of caution, perhaps more importantly now than ever. Your verdict has been returned with respect to

this phase of the proceedings and this phase is completed. The case is not over and your participation in it is not over. Therefore, all of the instructions that I have given you during the course of the trial remain very much in effect. Specifically, number one, you may not discuss anything having to do with the case at this point with anybody, with anybody outside or with each other, even though obviously for the last four and a half hours or so you have been discussing the case together and that's as it should have been. As of right now you should not discuss anything more about the case among each other and certainly with anybody else.

Secondly, again to the extent that there is media coverage with respect to the matter on an ongoing basis, again you are instructed and directed to be careful to insulate yourself with respect to any such media coverage. It is my suspicion that that will be even a little harder now than it was before. It therefore is all the more important that you insulate yourself from any such media coverage with respect to the

matter. I have additional instructions for you with respect to the second phase of these proceedings which I will share with you on Friday morning when you arrive.

Again the only other specific instruction I think, I will remind you again that as long as the case isn't finished, please avoid any personal contact on your own with the premises in Margate where the incident took place.

Counsel, anything further before I excuse the jury?

MR. TALASNIK: I have nothing, thank you, Your Honor.

MR. DAVIS: Nothing.

MR. PRESTON: No, Judge.

THE COURT: Ladies and gentlemen, thank you very much for your services so far and we'll see you first thing Friday morning.

Ladies and gentlemen of the alternate staff, if you will, I will also of course ask you to be back, I meant to include you, at nine o'clock on Friday morning. You will participate with the jury in the jury

box throughout the second phase of the proceedings. Frankly I haven't figured out yet, and I will by Friday morning, whether or not you will be in the jury room with the other jurors or whether we will have a separate jury room for you, I don't know yet. When you report on Friday, report to the sheriff's office and by then I will have figured that out. We'll see you Friday morning. Thank you.

(Alternates leave the courtroom).

THE COURT: On the jury verdict on the fifth count, judgment of acquittal in favor of the defendant Richard Highlander will be entered. I think with respect to the several counts of the indictment other than the first one, I think irrespective of the eventual determination on the first count I am constrained I believe to order a pre-sentence report with respect to those matters, am I not? I'm going to have to impose a sentence no matter what happens on the first count. I therefore will order a pre-sentence investigation report. It will

not commence in terms of contact with the defendant and an interview with him until after a sentence is determined with respect to the first count, but for purposes of the administration of the matter I will direct that that process be undertaken.

MR. PRESTON: Judge, in connection with that, certain materials are already available to the court in the pre-arraignment interview, pre-processing, those materials are already gathered. I would ask that none of those materials be made available to the Prosecutor's Office until conclusion of the entire proceedings.

THE COURT: I think that's appropriate. Okay. I will want to see counsel and the defendant at 1:30 tomorrow afternoon, at which time I will request Mr. Talasnik to make a proffer of an outline of the proofs he anticipates submitting to the jury either by way of additional evidence or by way of reference to that which is in the record. Are you now up, Mr. Preston?

MR. PRESTON: I think I have Mr. Talasnik's discovery package and will

have what you need tomorrow.

THE COURT: I will then request of Mr. Preston at 1:30 tomorrow that he advise the Court of mitigating factors upon which the defendant will rely and a proffer of the proofs that the defendant anticipates presenting with respect to that.

MR. PRESTON: As to the proffer of the proofs, Judge, I will state any proffer that has been transpired so far in terms of evidence, but I don't think I should be proffering or predicting what my witnesses will say.

THE COURT: Well, I didn't mean that that way. You're right. If you intend to rely upon the testimony of any expert, I think it would be appropriate for you to supply the State with a copy of any expert report that you have and --

MR. PRESTON: That will all be done.

THE COURT: And a CV of any witness you may call.

MR. PRESTON: That will all be done with the discovery package. The other

problem I have is that the Prosecutor presents his case first in the normal course and the defendant is never, never obliged to make known his case until the defense begins. I think I should advise the Court of my mitigating factors and my proofs at the beginning of the case as would normally be the occurrence in a normal trial proceeding. There's no obligation on the defendant to make an opening statement. There's no obligation on the defendant to tell the Prosecutor what his proofs or what his defenses are going to be until after the State has rested and I don't see any reason in a proceeding of the seriousness that we have here that it should be modified to a position that's adverse to the defendant.

THE COURT: My understanding was and is that the statute requires -- I agree with you as to the proffer of the proofs. All I'm interested in at this point is that the State be alerted to the existence and contents of any expert report.

MR. PRESTON: That expert report will certainly be provided. All of

the discovery materials which the statute and the discovery rules indicates I should supply to Mr. Talasnik will be supplied forthwith.

THE COURT: Well, 1:30 tomorrow is sufficient, but -- or to the extent that you have it now it should be given now.

MR. DAVIS: Judge --

THE COURT: Just a minute, please. It was my understanding, Mr. Preston, I'm going to have to check it out and I will by 1:30 tomorrow, that the defense was obliged to proffer to the court mitigating factors upon which the defendant intended to rely. The question of an opening statement and the question of whether the defense is required to identify mitigating factors to the jury in advance of presentation is a different issue and --

MR. PRESTON: Anything that the statute specifically requires I'm not quibbling with. That's not the issue here. The issue is the disclosure of the defense in terms of what would not be ordinarily required --

THE COURT: Okay, I don't know

the answer tonight and I'm not going to rule tonight. I will tell you this. I want you to be prepared tomorrow afternoon to proffer to the court a representation as to the mitigating factors that the defendant will seek to adduce evidence of to the jury. Whether you will be ordered to do that or not is a determination I won't make tonight, but be prepared to do it in the event that I decide by then that that's what your proper procedure is.

MR. PRESTON: Judge, the one thing I have is I was supposed to be in contact with one expert, a central expert at seven o'clock tonight. I didn't get a chance to complete that phone call.

THE COURT: I'm trying to get you out of here.

MR. PRESTON: I only say this for one reason. I'm going to be discussing with her the situation as it exists now, making a decision as to what the penalty phase and the testimony will be. I honestly cannot give, am not in a position to give Mr. Talasnik the discovery package immediately

because of that situation. I would like to give it to him tomorrow morning at nine o'clock or as early as I can.

THE COURT: So ordered. One last point. You received, all of you, some days ago from me a proposal that I had given you in theory for an opening and a closing charge in the penalty phase. It was all theoretical until this evening. I would like you at 1:30 tomorrow afternoon to be prepared to address the opening phase, which should be frankly very easy for you, and if possible to take a look at the closing phase, although that's not necessary by tomorrow. In fact one of the reasons I'm asking for what I'm asking is because I have to do some substantial work now on the closing phase charge because I left out entirely any reference obviously to mitigating factors and I have some work to do too. Again I'll decide tomorrow what it is that you're required to do.

Is there anything further that needs my attention this evening?

MR. TALASNIK: The only thing I

want to find out, Your Honor, is where I should physically be at nine o'clock tomorrow morning to accept notice of mitigating factors and discovery.

THE COURT: No, Mr. Preston has not indicated that he's prepared to do that at nine o'clock. He has indicated that he's prepared at nine o'clock to provide you discovery. He has indicated -- he hasn't, but I'll indicate that if I order him at 1:30 to give you notice of mitigating factors, he'll do that then. He is prepared to give you discovery tomorrow morning. Where do you want to do that?

MR. PRESTON: Does he want to come to my office or I'll send them to his.

MR. TALASNIK: I will go there.

THE COURT: The mountain goes to Muhammad. Okay, anything further that needs my attention this evening?

MR. TALASNIK: Nothing further.

THE COURT: Sheriff, you'll see to it that the defendant is here at 1:30 tomorrow.

MR. PRESTON: Judge, before Mr.

Highlander is taken back this evening, could I have five minutes or so with him?

THE COURT: Yes, sheriff, the defense should have whatever opportunity is necessary.

(Adjourn)

C E R T I F I C A T I O N

I, GERALD W. ABARNO, A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER OF THE STATE OF NEW JERSEY, DO HEREBY CERTIFY THAT THE FOREGOING MATTER IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN AT THE TIME AND PLACE HEREINBEFORE SET FORTH.

GERALD W. ABARNO, CSR
OFFICIAL COURT REPORTER
LICENSE NO. XI00326

DATE: 10/10/89

A-59-89T4

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

REC'D
APPELLATE DIVISION
JUL 11 1990
Clerk

A-59-89T4

STATE OF NEW JERSEY,

COMPLAINANT,

VS.

RICHARD HIGHLANDER,

DEFENDANT.

TRANSCRIPT OF
TRIAL

MORNING SESSION

AT: ATLANTIC COUNTY COURTHOUSE
MAYS LANDING, NEW JERSEY
ON: WEDNESDAY, JUNE 21, 1989

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

B E F O R E:

THE HONORABLE STEVEN P. PERKSIE, JSC

ORDERED BY:

JAMES JUKES

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

MURRAY TALASNIK, ESQUIRE
ASSISTANT PROSECUTOR, ATLANTIC COUNTY
ATTORNEY FOR STATE OF NEW JERSEY

NATHAN DAVIS, ESQUIRE
MICHAEL PRESTON, ESQUIRE
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I N D E X

WITNESS:	D	C	RD	RC
STEVEN TEASENFITZ				
Mr. Talasnik	35		40	
Mr. Davis		39		
Mr. Preston				

EXHIBITS:	ID	EV
S-56 Supplemental report	41	

M O R N I N G S E S S I O N.

(The following is heard in open court out of the presence of the jury at 9:20 a.m.)

THE COURT: All right, gentlemen, my understanding is that the defense has chosen to rest at this point without presenting any additional evidence, and that the State has one rebuttal witness to offer, is that correct?

MR. TALASNIK: Yes, Your Honor.

MR. DAVIS: Yes, Judge.

THE COURT: Okay, then let me first address -- before we get to the substance of the charge, which I want to discuss, let me review yesterday's question. Wait till I find it, gentleman.

MR. PRESTON: It also happens to be the first item on the substance of the charge, Judge, yesterday's question.

THE COURT: Page five. The defendant's right to remain silent.

MR. PRESTON: Yes, that is the first point that we would address also.

THE COURT: Go ahead, address it.

MR. PRESTON: We've reviewed it

with Mr. Highlander yesterday and again this morning. We ask that the Court not give that charge, delete it from the charge.

THE COURT: All right. Mr. Highlander, you heard yesterday and you understood the decision that you're being required to make in this matter?

THE DEFENDANT: Yes, sir.

THE COURT: You've had the opportunity to discuss it with counsel?

THE DEFENDANT: Yes, sir, I have.

THE COURT: And after that, it is your decision and preference that I not read this to the jury?

THE DEFENDANT: That is the decision we made, that you do not read it to the jury.

THE COURT: That'S your decision?

THE DEFENDANT: That's my decision, yes, sir.

THE COURT: Thank you, sir, you may be seated. On the defendant's election, the paragraph in question will not be presented to the jury.

Okay. We will then turn to a

review of the entire charge, the text of it, and the jury verdict form that goes along with it and I will heár such comment from counsel as they have. Mr. Talasnik.

MR. TALASNIK: Your Honor, on page thirteen of the proposed charge to the jury, there is a discussion of the alternative verdicts of reckless manslaughter and reckless aggravated manslaughter. It comes after the Court has discussed the three forms of purposeful and knowing killing, and also after a discussion of the concept of intoxication, to the extent that intoxication can prevent a charged defendant from being capable of exercising purposeful and knowing conduct. There is no specific sentence in the charge dealing with reckless manslaughter that tells the jury that intoxication is not a defense to reckless conduct. I recognize that that is implicit among the lawyers in the room, and it certainly is implicit in the charge because of the placement of the reckless manslaughter charges on the heels of what went before, but I suggest that when you are dealing with laymen who are charged by Your Honor that they have no

right to second guess you on what the law is, that you have to tell them what the law is and that the law is that intoxication is not a defense to reckless conduct.

THE COURT: Mr. Davis.

MR. DAVIS: Mr. Preston.

MR. PRESTON: Judge, I agree with the prosecutor, that is the law. My only concern at this point is that it not be introduced in a way that is confusing to its operation with regard to the first elements of purposeful knowing. What I would suggest is language such as the following. If you have once found that intoxication has negated the elements or purposeful knowing in regard to question one, then you may not consider intoxication again in regard to the mental state of recklessness in question two, that intoxication, while it is a defense to the mental state of purposeful and knowing, is not a defense to the reckless -- to the mental state of recklessness.

THE COURT: All right. Have a seat while I try my hand and I'll tell you how it comes out. I agree that it should say

something. Okay, first of all, where I propose to say it is on page thirteen after the first full paragraph. That is after the discussion of the concept of recklessness and the concept of extreme indifference, and prior to the paragraph that starts, in sum, I would propose to insert the following two sentences. I'll read them too fast for you to write, and then if we agree on the concept, I'll give it to you slowly. You will remember that I explained that the defendant stated intoxication, if any, is a factor that must be considered in determining whether the defendant acted purposely or knowingly. In deciding, however, whether the defendant acted recklessly, any intoxication is not relevant and should not be considered and -- actually it's relevant, it's just not a defense. Let me think again. Try this. You remember that I explained that intoxication of a defendant may be such as would prevent him from acting purposely and knowingly. With regard, however, to reckless conduct, any intoxication is not a defense and would not necessarily preclude a finding of recklessness.

MR. PRESTON: I prefer you use the

balanced language, if you say negate purposely and knowing, you should say negate recklessly, and have an even-handed treatment. I don't think the word --

THE COURT: Not necessarily prevent a finding. Not necessarily prevent him from having acted recklessly. Let's try it again. You will remember that I explained that intoxication of the defendant may be such as would prevent him from acting purposely or knowingly. With regard, however, to reckless conduct, any intoxication is not a defense and would not necessarily prevent him from acting recklessly.

MR. PRESTON: I don't think you could -- I don't know if, in that context, it's necessary to say that's not a defense. I think what we're talking about is intoxication as discussed in the statute as negating the element of purposeful and knowingly, and then the statute says that it cannot negate or does not negate the element of reckless, and I think that's what needs to be said. I don't think -- I don't think that we're looking at a situation here like alibi or insanity or talking about

those type of defenses. We're talking about the defense has chosen --

THE COURT: I understand.

MR. PRESTON: -- To negate an element of the defense that should --

THE COURT: And I'm substantively saying that. I'm simply not saying the legal words, negate the element.

MR. PRESTON: I'm not asking you to used the words negate the element. What I'm talking about is use in the extra verbage of defense, as putting it on as a defense.

THE COURT: It is a defense, an affirmative defense, number one, State must disapprove beyond a reasonable doubt, but it is nevertheless an affirmative defense. The statute specifically so denominates it. I don't specifically call it that in my charge under the subject of intoxication, but that's, in fact, exactly what it is.

MR. PRESTON: Well, my problem is that if it's addressed as a defense at this point, and the rationale is that it's an affirmative defense, then there must be a discussion about the State's affirmative

obligation to disprove it.

THE COURT: I did. In fact, I discussed the State's affirmative obligation to disapprove it in the first part, that I never called it a defense, but if you'll notice 2C:2-8, it says is not a defense unless it negates it as an element, which even if it negates, it's a defense, when means if it's a defense, and if found, it is a verdict of not guilty to that charge, which is what I charged the jury, if you look, Mr. Preston, you'll find it at page --

MR. PRESTON: On page -- part of my problem with the charge, too, is page eleven, a discussion of the intoxication.

THE COURT: We haven't gotten to your problems yet.

MR. PRESTON: No, I'm talking about in light of -- I'm making my objections on this particular point in light of where I'm also going to say about the other defects that I perceive in the charge.

THE COURT: Let's get on to it, let's get on to it. Will you note at page eleven the discussion on -- that I'll hear from

you when we get to your subject, Mr. Preston. Mr. Talasnik, do you have anything else?

MR. TALASNIK: Your Honor, that was the only problem area that I wanted the Court to address, and whether the Court uses the Court's language or simply recites word for word what is contained in 2C:2-8(b), it's a stylistic matter 2C:2-8b says, "When recklessness establishes an element of the offense, if the actor" --

THE COURT: That's the sentence I was looking for and I couldn't find it.

MR. TALASNIK: "Due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial." The State would be satisfied certainly if the Court simply charged the verbage of the statute.

MR. PRESTON: Well, if the prosecutor is asking the verbage of the statute, then let's leave out what's been said so far and charge the verbage in the statute.

THE COURT: Well, we're going to do a little of both.

MR. PRESTON: The problem that I

perceive is that we can -- we can so belabor the point as to muddle the waters for the jury and to create a false impression as to what the law is. We also run into the difficulty of repetition becoming an implication of proof.

THE COURT: Okay. It will read as follows at that phrase. You will remember that I explained that intoxication of a defendant may be such as would prevent him from acting purposely or knowingly. When recklessness is the relevant element of the charge, however, if the defendant was, by reason of intoxication, unaware of a risk that he would have been unaware of if he were sober, that unawareness is immaterial and he may still be found to have acted recklessly.

MR. PRESTON: Satisfactory.

MR. TALASNIK: The State would be satisfied with that, Judge.

THE COURT: That is the language and I will insert it as indicated at paragraph thirteen.

THE COURT: That is the sentence I was looking for and couldn't find, so I appreciate that. Anything else, Mr. Talasnik?

MR. TALASNIK: Nothing further with respect to the charge. Thank you, Your Honor.

THE COURT: Mr. Preston. I gather, Mr. Davis, Mr. Preston speaks for the team?

MR. DAVIS: Yes, Judge.

MR. PRESTON: I think we might pick up on page seven, I think, is the first point that we have in addition to the paragraph that was deleted on page five. In the middle of the page, the second full paragraph, there is a discussion with respect to motive. There are a couple problems with the paragraph. The last sentence -- well, it -- I better put it in context here. The State is not required to prove motive, the charge says. If the State has proved a motive you may, of course, consider that insofar as it gives meaning to the other circumstances. Followed on the heels of that, on the other hand, the absence of motive may be considered in weighing whether or not the defendant participated in the crime charged. That is not at issue in this case at all, and the focus of the absence of motive diverts the

jury's attention from what is an issue in this case. Now, we can say what the definition of motive is, legally, et cetera, but we're still talking about motivating factor or the moving force, in this case, heat of passion being in that category. The only thing you talk about in terms of the absence of motivating factors simply steers the jury away.

THE COURT: What's the application, to strike the last sentence?

MR. PRESTON: The application is, first of all, to strike the last sentence.

THE COURT: And what's second of all?

MR. PRESTON: The second is to add a sentence indicating that with regard to motivating circumstances, however, or some language to that effect, the State is, of course, required to disprove heat of passion.

THE COURT: I say that -- I say that at the top of page -- just a minute, I'll tell you exactly where I say it.

MR. PRESTON: I realize --

THE COURT: Page nine --

MR. PRESTON: I realize --

THE COURT: Twice.

MR. PRESTON: -- That it was said.

THE COURT: Said twice, I realize that it is said at a point some two pages distant from the issue that we're talking about. What we're talking about here is there was, evidently in somebody's mind, the thought that the absence of motive should be discussed with motive. Now, since we have an absence factor here, it could -- should also be referred to. I mean, if it was important enough to put in the first time, it seems as if the real issue should be put in parallel with it at this time.

THE COURT: I understand. Mr. Talasnik, as to all of that?

MR. TALASNIK: Your Honor, with respect to the application to strike the last sentence, the State has no objection. Otherwise, the State is satisfied with the formulation that the Court has prepared. I think that it logically ties in that defense with the substantive charge of knowing and purposeful killing.

THE COURT: The last sentence comes from the model charge, I agree with Mr.

Preston that in the facts of this case it is unnecessary and -- while not necessarily inappropriate; neither is it particularly appropriate. Accordingly, the last sentence will be deleted. I am not satisfied anything that is left distorts or doesn't accurately reflect the status of the law, particularly since, shortly thereafter, when I do discuss the subject of passion provocation, I twice emphasize that it is the affirmative obligation of the State to establish beyond a reasonable doubt that there was no passion provocation.

MR. PRESTON: May I make another application there with regard to that other alternative suggestion? That it is logically consistent to remove the part of that paragraph which says that the State is not required to prove motives, et cetera, and the paragraph flows clearly through the charge there, and to place that discussion of motive with the heat of passion or near the heat of passion instead of having it some two pages divorced --

THE COURT: I understand. I disagree. I think that the heat of passion argument belongs where it is, at the conclusion

of the entire review of both forms of murder, capital and non-capital, and I think that the question of motive or the lack of it is a separate question. They are, indeed, related but they are, in fact, separate. One can act with a motive without acting in the heat of passion from a provocation; one can act in the heat of passion from a provocation without motive; one can act in the other two alternatives of that as well; that is, with both and without both. I think that they are related issues, but they are, indeed, separate, and in my view, should be discussed separately.

MR. PRESTON: May I offer one further thought for the Court, and that is this trial being an adversarial proceeding, there is, of course, the ultimate maxim of divide and conquer.

THE COURT: Hold that thought a moment, Mr. Preston.

MR. PRESTON: And by fragmenting the very much aligned and related concepts in terms of the motivating forces in this case, that appears to be a very successful strategy for the State. I cannot fault them stratagist

from objecting to what I say.

THE COURT: I am not a strategist for the State; Mr. Preston. This is what I perceive is the most intelligible way of getting a message to the jury that I would suggest, from you, from my efforts of putting this together, is very difficult to convey intelligently.

MR. PRESTON: I didn't mean to infer that the Court was -- that's what I asked.

THE COURT: I do not perceive myself as having the responsibility or even the authority to act as a strategist for anybody other than me, and my strategy is simple, how do I make this as comprehensible as possible to sixteen people.

MR. PRESTON: The next item occurred at page eleven. It seems to me that the law is that there is no burden of proof upon the defendant that they must prove by any standard intoxication. They need -- there need to be only introduced evidence, and the defendant didn't even have to introduce that evidence if the State has done so.

THE COURT: I agree with that statement of the law. What language do you have

a problem with.

MR. PRESTON: The last part of the first -- well; continuating paragraph on the top of the page.

THE COURT: The not full paragraph at the top.

MR. PRESTON: The not full paragraph at the top of the page, yes.

THE COURT: And what language in there do you have a problem with?

MR. PRESTON: What is required is language indicating a burden of proof. A showing is language indicating a burden of proof. You must be satisfied is language indicating a burden of proof. Now, despite the fact that at some other points in the charge the law is stated correctly, if it is not stated correctly in another point, that itself is a problem, and it's -- it needs to be addressed. I would suggest that the last two sentences, that what is required, can be deleted because you talk about those same things in the correct terms at the end of the next paragraph. The State must prove beyond a reasonable doubt that the State -- that the defendant had the ability

to act with purpose or the knowledge required, and in that paragraph, as to what intoxication can be shown and what can't be shown, is the same things that we're talking about before, up above, only they're not phrased in terms of the burden of above being put on the defendant. They're talking in terms of the State is required to show beyond a reasonable doubt that those matters of intoxication did not exist.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, I think Mr. Preston is reading something into the verbage that is not there for the purpose of castrating the -- the intent of the Court in Cameron in setting what the standard is for intoxication. Both the model charge that existed before Cameron and as was interpreted by the Court afterwards indicates that before intoxication can cause reasonable doubt as to whether the defendant acted purposely or knowingly, there must be evidence of a prostration of faculties.

THE COURT: Okay. Gentlemen, in the last sentence that starts, what is required is, the words, a showing of, will be stricken

and substituted, that there was, what is required is that there was such great prostration, and on the next two lines thereafter were it says you must be satisfied, those four words would be deleted. I would delete the word required and use Mr. Talasnik's word, evidence of. If that's the test of Cameron, there is no requirement. It's -- what is required is that there is evidence of such great --

MR. TALASNIK: Okay.

MR. PRESTON: And I think that the other problem is that the reversal, that the problem is with, you must be satisfied that the defendant was so intoxicated. The burden of proof, in terms of a reasonable doubt upon the State, the State has to disprove that.

THE COURT: I'm taking out, you must be satisfied.

MR. PRESTON: Okay.

THE COURT: The sentence that reads as follows. What is required is that there is evidence of such great prostration of the faculties that the required mental state was totally lacking. That is, that the defendant

was so intoxicated that he did not have the purpose or knowledge to commit the crime.

MR. TALASNIK: Okay.

THE COURT: All right. Okay, next issue.

MR. PRESTON: The --

THE COURT: Excuse me, where was the insert on the intoxication?.

MR. PRESTON: That was page thirteen.

THE COURT: Yes, okay.

MR. PRESTON: The bottom of the next paragraph on page eleven.

THE COURT: Bottom of the next paragraph, right.

MR. PRESTON: Where it says, the State must prove beyond a reasonable doubt that the defendant had the ability to act with purpose or the knowledge required. That still does not seem to me to address the situation that the State has the obligation to prove beyond a reasonble doubt that intoxication did not reduce the mental state. The statement that you have there is so general as to not address the intoxication itself. You've discussed

intoxication throughout that paragraph and then you've all of a sudden left it out of the last sentence and given a general statement. I would suggest that you insert in there, including any effective intoxication, or something like that, to refer it back to what you're discussing in the top paragraph instead of just leaving it as a general statement. As a general statement, it's a mere --

THE COURT: For example, are you suggesting that it should say something as follows? The State must prove beyond a reasonable doubt that, even if the defendant was intoxicated, he had the ability to act with the purpose or knowledge required. Is that what you're saying?

MR. PRESTON: I think it's more than that. I believe it's -- the State -- the burden is on the State to disprove intoxication.

THE COURT: It is not. That's not the law. The State, the burden is on the State to disprove that any intoxication negated the purpose or knowledge that is otherwise required. That's the law. Can he be intoxicated and still act purposely? The issue is whether by reason

of intoxication he couldn't act purposely. The State must disprove that.

'MR. PRESTON: And this is the issue, the parallel issue under intoxication that arose with State vs. Humaneck that went up to our Supreme Court and went over to the 3d Circuit, and for that reason, the statute was declared unconstitutional, this is, the parallel issue. What we were discussing prior was that --

THE COURT: Mr. Preston, just tell me what you want the language to say.

MR. PRESTON: Judge, what I am proposing -- what I am arguing to the Court is simply this, the defense now is caught on the horns of a dilemma with two misstatements of law and I'm trying to explain that.

THE COURT: Where is there a -- show me a misstatement of law.

MR. PRESTON: At the beginning of -- at the beginning of our discussions here.

THE COURT: Mr. Preston, show me a misstatement of law.

MR. PRESTON: You have the document in front of you.

THE COURT: Point to it.

MR. PRESTON: The overall tenor of the document and not any specific word. I can't say that the word his is wrong, I can't say that the word defendant is wrong. I am trying to get out, Judge, and I would beg the Court's permission to do this, exactly what the position of the defense is right now, and it's problems, so that I can point it out to the Court, so I can explain why we are in a knowing situation and a situation in which there is nothing that we can do that would be correct. The problem is that, at the beginning of our discussions today, it was addressed by the Court that certain objections I raised were not proper because intoxication was an affirmative defense. That's step one. Intoxication, if we assume intoxication being an affirmative defense, we are talking about affirmative defenses being that the State has proved all the other elements of the crime, now the affirmative defense steps in and removes legal culpability, that's a situation with affirmative defenses, and that's a situation which the State -- in which the Court has characterized intoxication. Now, we

are dealing with a situation in which the Court is now saying that it's not one of those matters that the State has proved all the elements of the crime and then there is an extra element that steps in to negate legal culpability. They're saying that the intoxication goes to the disproving of a traditional element of the offense itself, namely, the mental state.

THE COURT: You don't think that's what the law says?

MR. PRESTON: What I'm saying is the law -- State vs. Humaneck has declared that statement and that conundrum to be unconstitutional, and it has done so in this way.

THE COURT: No, it hasn't, not at all. Do you have a recommendation to make for language, Mr. Preston?

MR. PRESTON: Judge, any recommendation that I make on this particular point cannot be made in any good faith, in any good conscience.

THE COURT: The answer is then you have no recommendation.

MR. PRESTON: I can't, given the

light of what Your Honor has ruled already.

THE COURT: I understand.

MR. PRESTON: The two have to be addressed together. If they can't be addressed together, there is no way that the defendant can get a just result out of this.

THE COURT: Mr. Talasnik, do you have any recommendation you wish to make on the subject?

MR. TALASNIK: No, Your Honor, thank you.

THE COURT: I'm going to add to the last sentence in that paragraph, the sentence that reads, the State must prove beyond a reasonable doubt that the defendant had the ability to act with the purpose or knowledge required. I'm going to add the words whether or not he was intoxicated. Next issue, Mr. Preston.

MR. PRESTON: Next issue appears in the jury verdict form.

THE COURT: Okay.

MR. PRESTON: Should I proceed, Judge?

THE COURT: You may.

MR. PRESTON: Thank you. Initially, when the jury verdict form was proposed and distributed to counsel by the Court, the form at the bottom of the page in the asterick portion, which was required by case law, indicated that if the defendant is found guilty of A, the jury will determine whether or not the death penalty will be imposed. That was the original language, I believe.

THE COURT: I think you're right. I can get it for you exactly if you want. Death penalty, whether or not the death penalty will be imposed is what I had originally suggested.

MR. PRESTON: That language is objected to by Mr. Talasnik, pointing out that the jury was going to decide whether it was the fitting and appropriate punishment in this case, thereby interjecting as into this guilt phase instruction some Court instruction on the evaluative process that is proper for the penalty phase. At that point, Judge, I think that we have taken a digression and given a partial instruction which now creates problems in the sense that its partiality has some misleading information and can introduce some

misleading judgments into the case. The cases, besides talking about whether the death penalty is fitting and appropriate, also address the rampant pattern behavior by the Prosecutor's Offices of this State in the many trials that were decided by the Supreme Court in which the Prosecutor's Office argued to the jury that they had no responsibility for death penalty, that they were just following the law and that it was a mechanical imposition and that the juries were then gutted of any responsibility for what they had done. The Supreme Court replied to that line of argument with, I would say, what can only be characterized as a great deal of admonishment, if that was not the case, it should never be the case, it should never be implied that it was the case, and no impression whatsoever under any circumstances should be created by the Court or the prosecutor that that was ever the case.

The problem that I have with this language is that it can leave the jury, and tends to leave the jury with the impression that whatever their verdict would be in the penalty phase, it would be advisory only, that death

penalty need not be imposed, that that language, in itself, addressing the elements of the penalty phase; I understand the position of the Court to be that we need to get into it, and prosecutor to be that we need not get into a discussion of all the law about penalty phase and the guilt phase, that the only reason we're doing this is because the Supreme Court has instructed us to. Maybe that, you know, is the proper way of think about this, that we should stay away from all discuession about it. But if there is going to be some discussion, then it has to be an accurate reflection and cannot mislead the jury. I think that in order to address the -- not only the jury's discretionary function, the other half of that needs also to be addressed, and that is the jury responsibility function. If one is going to be addressed, the other has to be addressed. And I'll propose the language to address both concerns and to give a balanced treatment here, that the asterick portion read that the jury will determine whether or not the death penalty will be imposed as the appropriate punishment in this case. I have added four brief words. I

don't think it tends to unduly lengthen it. I realize that we have to make some statement. I agree that we do not need to get into a lengthy description of how the process is or what the law is, but I do think that what we say has to be balanced to address the major concerns that the Supreme Court has had.

THE COURT: Anything else that you have, Mr. Preston?

MR. PRESTON: That's the last thing I have, Judge, thank you.

THE COURT: All right, I'm not going to change the language in the form. It is not by itself, it is to be considered in the context of several factors. In the first place, the instructions that I gave to the jury, going back to the voir dire, the individual voir dire process of each juror, where it was explained to each juror the jury would make the decision in the appropriate situation, that in the charge I propose to tell the jury that the jury will decide in a separate proceeding whether or not the death penalty is the fitting and appropriate punishment in this case and is, therefore, the sentence that the Court will impose, and lastly,

if we get to that point, the charge on the penalty phase is replete with the requisite language instructing the jury that it is their responsibility as well as their authority, and that the death penalty may only be imposed only upon their determination and will be imposed upon their determination that it should. I am, therefore, satisfied that the proposed formulation about whether the death penalty is the fitting and appropriate punishment is, for this purpose, in consideration of the language of the Supreme Court opinion that requires it in the form to begin with, sufficient. Okay. With those changes, the charge will be presented to the jury as submitted.

Now, if I understand correctly, we have brief rebuttal testimony to be offered by Mr. Teasenfitz, and then, as I understand it, we're ready for summations. It would be my purpose to take a brief five minute recess after the rebuttal and before the closing just to get your papers in order and what not.

MR. PRESTON: Judge, as long as we're discussing legal matters, there is one thing that we probably should look at now, and

that is there has been some press coverage, daily press coverage of this trial. I know that Your Honor has instructed the jury with regard to not reading the newspapers, but it has been extensive, and I would suggest --

THE COURT: Extensive? There has been one article a day. Poor Leon's here all by himself.

MR. PRESTON: I'll say, Judge that that's not the usual occurrence with most of the trials that we experience in this Court.

THE COURT: He's not in here now, as I look up.

MR. PRESTON: This trial has proceeded not over just one day or two days, so we have accumulated a goodly number of the articles.

THE COURT: I have all of the articles, the record has reflect that there has been -- I'll tell you exactly how many articles. There were five last week and today is Wednesday, two this week. So there have been a total of seven articles in the local newspaper.

MR. PRESTON: And I would ask that the Court, before sending the jury out to

deliberate, make the inquiry as to whether any of them have read anything.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Leave that to the Court's discretion.

THE COURT: Okay. I don't particularly see any reason to do it, but neither do I particularly see any reason not to do it, and accordingly, I'll do it.

MR. PRESTON: Thank you, Judge.

THE COURT: Anything else? All right. Mr. Davis, I will ask you to rest in front of the jury.

MR. DAVIS: Yeah, I just want to release the witness, Judge.

(The following is heard before the jury at 10:05)

THE COURT: All right. As you remember, we had some evidence presented yesterday afternoon by the defense, and we're prepared to proceed this morning. Mr. Davis.

MR. DAVIS: I rest, Your Honor.

THE COURT: Ladies and gentlemen, the defense rests. That means that the defense has completed the presentation of evidence in

connection with the charges in the Indictment. The law provides that after either side has rested, the other side may, if they choose, present brief evidence in the form of what is called rebuttal, or evidence that is designed to meet testimony that the other side has presented. The State has advised me that they have one rebuttal witness that they wish to present this morning. Mr. Talasnik, you may proceed.

MR. TALASNIK: State would call Detective Steven Teasenfitz.

S T E V E N T E A S E N F I T Z, HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: Mr. Teasenfitz, you may be seated. You were administered the oath in this matter. The oath that you took last time continues in effect day.

THE WITNESS: Yes, Your Honor.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. TALASNIK:

Q. Detective, I'd like to direct your attention to the evening of April 28th, 1988.

This would be about three days after the death of Gloria Simonelli. On that occasion, or on that date, did you have occasion to visit with the residents of 2 Berkshire Road in McKee City, New Jersey?

A. Yes, I did.

Q. And with whom did you meet that Thursday evening?

A. Upon my going to that address, I met Mr. Brian Abruzzi and Ms. Judy Ellenbogen.

Q. During the course of your stay there, did you have occasion to interview those two individuals about Rick Highlander?

A. Briefly, yes.

Q. Where did this interview take place?

A. In the person's -- these peoples' home, the 2 Berkshire Road.

Q. Was it a situation where you interviewed the two of them separately or were they both together?

A. They were together at the time.

Q. And would each of them have been in the same room during the course of the questioning to hear the questions asked of either one of them?

A. Yes.
Q. Okay. During the course of that discussion, was Mr. Brian Abruzzi, therefore, present?
A. Yes, he was.
Q. Was there some discussion with respect to anything that Mr. Highlander may have said about his problems with Gloria Simonelli?
A. Yes, there were statements, yes.
Q. What information was provided to you by the couple regarding any statements Mr. Highlander had made about his problems with Gloria Simonelli?

MR. DAVIS: Object to this, Your Honor.

THE COURT: I'm going to sustain the objection to the form of the question, Mr. Talasnik, as being overbroad. If you want to specifically address him to a particular issue, I'll hear the question.

MR. TALASNIK: Very well, Your Honor.

BY MR. TALASNIK:
Q. Was there some indication from the persons being interviewed that Richard

Highlander had expressed some concern about going to jail over certain charges that had been made against him by Gloria Simonelli?

A. Yes, there was.

Q. What kinds of information were provided to you during that evening interview about Mr. Highlander's concerns about going to jail over the charges brought by Ms. Simonelli?

A. Ms. Ellenbogen had stated to me that Mr. Highlander was concerned about going to jail because he had a past history with the law and was in the process of trying to rectify his past history, his past problem.

Q. Was any specific reference made to the prospect of going to jail and the charges made against him by Ms. Simonelli?

A. Yes. The charges were in reference to the current charges of the aggravated assault and the -- a restraining order which had been signed, and the relationship with his past history, his past record.

Q. Was this information also discussed by Mr. Brian Abruzzi?

A. He was present and agreed to the statements made by Miss Ellenbogen.

MR. TALASNIK: Thank you, no further questions, Your Honor.

CROSS EXAMINATION

BY MR. DAVIS:

Q. Detective, basically, when you were in the home, you were speaking to Ms. Ellenbogen?

A. Primary, yes.

Q. And her husband, as of today, Brian Abruzzi, was in the same room while you were questioning her?

A. Yes.

Q. Okay. And when you indicated that he concurred with his wife's statements, did he say anything or was he just sitting there silent?

A. He made reference, yes, he said he agreed with these statements.

Q. Okay. Did you take any statement from them?

A. No, I did not.

Q. And all that you have were some notes which would indicate that you spoke to them back in -- on what date?

A. The 28th, the evening of 28th of April, 1988.

Q. April 28th?

A. That's the evening I spoke with these two people, yes.
Q. And you finally wrote a report on what date?
Q. On the 4th of May, 1988?
A. Okay. And contained in your reports there is no quotes from Brian Abruzzi or his wife, is there?
A. No, there are no quotes.
Q. And Mrs. Abruzzi just indicated that Richard did have some concerns about going to jail?
A. Yes.

MR. DAVIS: Okay, that's all I have, Your Honor.

THE COURT: Mr. Talasnik.

REDIRECT EXAMINATION
BY MR. TALASNIK:
Q. Well, now, Detective, did you, in fact, prepare a report summarizing these interviews?
A. Yes, I completed a supplementary investigation report.
Q. And at the time of the preparation of the report was the conversation fresh in your mind?
A. Yes, it was.

MR. TALASNIK: Your Honor, I have a document I'd like to have marked for identification.

THE COURT: S-56.

(S-56, Supplementary investigation report marked for identification)

MR. TALASNIK: I'll show the item to Mr. Davis.

MR. DAVIS: Okay.

BY MR. TALASNIK:

Q. Detective. I'm going to show you a document that has been marked S-56 for identification. I ask if you recognize what it is?

A. Yes, I do.

Q. What do you recognize it to be?

A. This is a photocopy of the supplementary investigation report which was prepared by myself.

Q. At the time of its preparation was it accurate, to the best of your recollection?

A. Yes, it was.

Q. Is there an indication on that report of your conversation with Ms. Ellenbogen and her husband Brian Abruzzi?

A. Yes, there is.
Q. Is there an indication on there that the two were present in the room at the same time?
MR. DAVIS: Judge, I object to these questions.
THE COURT: Sustained as to the form.
BY MR. TALASNIK:
Q. Okay. What does the report indicate with respect to the locations of Mr. Abruzzi and Miss Ellenbogen?
A. The report indicates that I was greeted by Ms. Abruzzi -- Mr. Abruzzi and Miss Ellenbogen. It further explains that the two had recently been married.
MR. DAVIS: Judge, I object, it's not responsive to the question.
THE COURT: What's it indicate about their location, he asked you.
THE WITNESS: That they were present together.
BY MR. TALASNIK:
Q. What does the report indicate about any reference to Mr. Highlander's fears of going to jail as a result of the charges made by Ms.

Simonelli?
A. The last paragraph indicates that Richard Highlander had some difficult times with Ms. Simonelli and that he was very concerned about going to jail because of the complaints -- because of the complaints signed against him by Gloria.
Q. And finally, Detective, what reference is there to the acquiescence in that information by Mr. Abruzzi?
A. There was a reference that Mr. Abruzzi agreed to these statements made by Mrs. Ellenbogen.
MR. TALASNIK: Thank you. I have no further questions.
THE COURT: Mr. Davis.
MR. DAVIS: I have no questions, Your Honor.
THE COURT: You may step down Detective. Thank you.
THE WITNESS: Thank you, Your Honor.
THE COURT: Ladies and gentlemen, in connection with that testimony that you just heard, let me again put that into a certain

category of evidence. You may remember the other day I explained to you briefly, in connection with some other evidence that I'll remind you about later, that in general, we allow evidence in a case to be considered by the jury for any purpose that relates to the charges. There are certain kinds of evidence that are offered for a limited purpose, and I gave you one the other day. I'll remind you about it later. This is another. You've just heard Detective Teasenfitz tell you what Abruzzi said the defendant said about being concerned about going to jail. You can't -- that's, as you can hear the way I described it, that's quite complicated hearsay, and accordingly, you can't consider that evidence by Detective Teasenfitz as part of the evidence that you will need to decide about whether, in fact, the defendant had that concern. We'll have to use whatever other evidence in the case there is to decide whether you believe that or not. This evidence is offered for a limited purpose, and it may be considered by you for a limited purpose. It is offered to contradict the testimony that was offered yesterday by Mr. or

Mrs. Abruzzi. You'll have to decide what effect it has on the credibility of either or both of them. If you consider this evidence that you have just heard as important and relevant in your determination of the credibility of the evidence offered yesterday by Mr. Abruzzi or Mrs. Abruzzi, you may consider it for that purpose and no other. If you don't consider it relevant for that purpose, you shouldn't consider it relevant for any purpose. In other words, it has that limited purpose of assisting you in evaluating the testimony that you've heard from the Abruzzis. That's why it was presented to you today. All right. Mr. Talasnik, do you have anything further?

MR. TALASNIK: No, thank you, Your Honor.

THE COURT: The State rests. Mr. Davis.

MR. DAVIS: Nothing, Your Honor.

THE COURT: Defense rests. Ladies and gentlemen, that completes the evidential portion of this case. With the testimony that you have now heard from all of the witnesses and with your examination to come of several

exhibits in the matter, all of the information and material to be considered by you in terms of evidence has now been presented. We will take a very brief recess only for just a short moment, at which -- after which I will invite first Mr. Davis and then Mr. Talasnik to speak with you regarding final argument. Now, let me just remind you, as I explain in the beginning of the case, in their final arguments, the attorneys will recall for you the evidence that we have all heard and they will suggest to you what they think you should feel is important and believable and what conclusions you should draw from the evidence. Their remarks will be very helpful to you and you should pay careful attention because they will focus your attention on the specific issues that you will need to decide and on what they think you should decide based on the evidence. You must, however, keep in mind as you listen to them a couple of points. The first, they may tell you what they think you should think is important, and that's appropriate. But in the end, what is important in this case is what you think is important, not what they tell you to think. Secondly, your

version of the credibility of the witnesses and their importance is what counts, not necessarily what the attofneys will suggest to you. Third, in the course of their remarks, it is possible, given the nature of things, that they may say something about the evidence and their recollection of the evidence that differs from the way you recall it. They may say, you remember witness so and so who said such and such, and you may say to yourself, gees, I remember witness so and so but I don't think he said such and such, I think he said whatever. If something like that should happen, you should keep in mind that you are bound by your recollection of what you recall the evidence to be and the testimony, not necessarily by what the attorneys tell you they recall. Okay. With that, I will recess you juet very briefly to catch a breath and then we'll be back and start with closing arguments.

(Whereupon Court takes a brief recess at 10:20).

(The following is heard before the jury at 10:30).

THE COURT: All right. Mr. Davis,

you may proceed.

MR. DAVIS: May it please the Court, Mr. Preston, Mr. Talasnik, ladies and gentlemen of the jury, as the Judge indicated to you a few moments ago, at this stage of the proceedings, it's my duty to sum up what I consider to be the most important factors surrounding your verdict concerning the defendant in this matter, Richard Highlander. Of course, once I complete my summation, then of course, Mr. Talasnik, on behalf of the State, will have an opportunity to do the same thing. And as the Judge has further indicated to you, ladies and gentlemen of the jury, and was indicated to you prior to the commencement of this case, the evidence doesn't come from my mouth, the evidence doesn't come from the mouth of Mr. Talasnik. You, in this past week and a half or so, have had the opportunity to listen to the various witnesses, you will have an opportunity to see the various pieces of evidence that has been introduced into evidence, and it's from that testimony and that testimony alone, of course, that you're going to determine what your verdict is.

Now, of course, I'm going to sit here and I'm going to try to persuade you, as I indicated to you at the beginning, that the only crime that Mr. Highlander is guilty of with regard to this matter is manslaughter, and I'm sure that when Mr. Talasnik stands up he's going to try to persuade you that, in fact, he's guilty of more than manslaughter, he is guilty of knowingly and purposely killing Gloria Simonelli. Now, ladies and gentlemen of the jury, as you sat here in the last week and a half, you've heard many people testify. I'm sure that you have remembered certain things that certain people have said, other things you haven't remembered, but what I hope that you have gotten from all of the testimony that has been adduced in this courtroom is the broad picture, the entire picture of this situation.

As I indicated to you when I stood before you in my opening, this was not a case of who killed Gloria Simonelli. Mr. Highlander readily admitted that he killed Gloria Simonelli, and each police officer, or I should say each police division, the F.B.I., the prosecutor, Margate Police, anyone that spoke to

him, he readily admitted that he had killed Gloria Simonelli. The question is how was she killed, why was she killed, what was the state of mind of Richard Highlander moments before this incident happened.

Now, Mr. Talasnik has presented many witnesses, and these witnesses were basically, some were friends of Gloria, some knew Gloria, some knew Gloria and Richard. They indicated to you, ladies and gentlemen of the jury, the relationship between Gloria and Richard prior to April 25th. The statements that Richard had said, some were not too pleasant, some which were probably endearing to him.

Now ladies and gentlemen of the jury, as I sum up, I think that the most important moment in the life of Richard Highlander was what was on his mind when he went back to the Greenhouse Bar the second time on April 25th, and I'm going to touch on that, and I'm not going to touch on it, I'm going to speak on it very deeply.

The other thing which I will speak in depth also is, I know that he told various

people what he intended to do to Gloria, that he intended to harm her, that he intended to kill her. What I think is important about those issues is that those statements were said some two weeks, some three weeks, some days, and we all have minds, and one thing a mind will do, a mind will come, a mind will go, we think we will, we think we won't, but it is what we think that we do at the moment that we did that really counts, and in the law that's what is known as the standard, and the Judge will get to that.

Ladies and gentlemen, if I would have to characterize this case, this is a case, it's an emotional case, it's a case about love, it's a case about love going astray, and I believe the most important part, as we sit here today, is what was Richard Highlander's feelings, what was his feelings toward Gloria Simonelli. The strange thing about love, it doesn't have to be two-sided. A man can love a woman with all his heart and the woman may not even like to look at him. A woman may love a man with all her heart and the man may not care or think about the woman. But that's a humanistic quality about people. And why we

care for people, you probably don't know. You may sit down, oh, I like their personality, I was attracted to her intelligence, I was attracted to her looks, but when you look deep down inside, you probably will come up with a question mark, why this woman, compared to all the rest of the women in the world.

Richard Highlander, for whatever reason, for whatever reason, he fell in love with Gloria Simonelli, but the love wasn't working on both sides. You know, you get to a position like Richard Highlander was in. Have you ever been so hungry that food won't solve the problem? Have you ever been so thirsty that a drink wouldn't quench your thirst? That's what Richard Highlander was going through. Have you ever been so much in love that the mere thought of the person leaving was terrifying, it was hurting? Have you ever been hurt? That's what happened to Mr. Highlander. He was hurt. He was hurt. Regardless of why he fell in love, regardless of why he was hurt, the man was hurt.

We have a man here, ladies and gentlemen, it's been shown that he met Gloria Simonelli sometime October, September '87, and a

relationship began. Richard Highlander, during the course of this relationship, showed Gloria Simonelli love. Now, when it comes to showing love, some of us think buying gifts is love, some of us thing getting married is showing love, some of us thing that having children is showing love, some of us think it's the intangibles, it's the feeling between the two, but we all show it in different ways. And Richard was showing it in his way, whether his way was right, whether his way was wrong, whether you agree or whether you disagree, he was showing it.

And he moved in with Gloria Simonelli, and believe me, all due respect to Gloria Simonelli, Gloria Simonelli, ladies and gentlemen, was not a child, Gloria Simonelli was thirty-one years, she was a full grown woman, and when Richard Highlander moved in. Regardless of what anyone says, she opened the front door and she allowed him to move in, and when she allowed him to move in, she allowed him to think that he had certain privileges. She allowed him to think that she had certain feelings for him. Now, whether she did or whether she didn't, we

don't know. We don't know really what her true feelings for Richard Highlander was. I don't know, we don't know if she loved him, whether she just did it for whatever reasons, we don't know, but we know what she did. When a woman opens the front door and says, come on in, share my bed, help me pay my bills, let me go out with you, let me go on vacations, thanks for the various gifts, lays in his arms every night, tells him how much she loves him, allowed him to speak to her in terms of having children, in terms of the future, building a relationship, of building a house, it's not wrong for a man to think that this woman loves me. Richard Highlander thought that Gloria Simonelli loved him, and as the relationship continued, some of her friends got on Mr. Simonelli, the mother got on him and said Gloria was frightened, she wanted to terminate it. And if you think back, I asked those people, when did this feeling, or when did they get the feeling that Gloria was frightened, going to terminate it, wanted to put Richard out. They all indicated to you, ladies and gentlemen, in fact, Mrs. Simonelli started, I think, around December, Christmas, from

Christmas, January, February, this frightful feeling. Now, maybe it was Gloria, maybe that's the impression that she gave to momma, but she didn't give that impression to the rest of the world, because if you will remember, when her friend, Ms. McCabe, took the witness stand and commenced to tell you how frightened Gloria was and how much Gloria wanted to end this relationship and how bad she wanted to get Richard out of that house, she gave you the months of January, February, and then when I questioned her about the newspaper article that appeared on February 14th, Sweethearts Day, Valentines Day, when Gloria was telling the world, or anybody that read the Philadelphia Inquirer, she loved him, that they were planning to get married, how they met, it belies everything that was said up to that point.

Mrs. Abruzzi also came in and told you that the week before Thanksgiving she was at her home, Gloria, and it appeared that the relationship was well. In fact, so much so, Gloria was pushing Rick Highlander to buy her an engagement ring. That, within itself, ladies and gentlemen of the jury, belies that at that

point in Gloria's life that she wanted Richard out. She may have wanted him out, but there was certain things, ladies and gentlemen of the jury, that she wanted from Richard Highlander.

Now, as Richard and Gloria continued to live together, there appeared to be some problems between the two, which is not uncommon between a man and a woman, and if you listen to the testimony, ladies and gentlemen of the jury, probably some of the basis of that was drinking too much on both sides, some drugs being used on both sides, and as a result thereof, there came a point in their life where Gloria indicated to her mother that she wanted Richard out, and I think what we should consider at this point, ladies and gentlemen of the jury is, that was a couple weeks before March, 16th, right in the beginning of March, that there was no indication that Gloria did anything. The mother comes down, I have nothing against the mother, my heart goes out to Mrs. Simonelli, nothing against the father because he's the father, my heart goes out to him, but when you get to the point that you're thirty, thirty-one years old, and you bring a man into your house

to live, you don't go to Momma and Poppa and say, can I bring him in, she didn't do that, but when it comes time to put him out, she reached out. Of course, that bothered Richard, but he left, but he left, and then he had a reconciliation.

Now, at that point in her life, beginning of March, if she desperately wanted to get rid of Richard, if she so desperately wanted to get rid of him, he was gone, stay out, but she allowed him out. And we get now to March 16th, ladies and gentlemen of the jury. On March 16th, some kind of altercation. You heard the taped statement. Mr. Highlander indicated to you that, in fact, he slapped her, she kicked him. Further indicated that he was by the stairs, she pushed at him, he lost his balance and as we went back, he grabbed her, they both fell down the steps, and the next day she gets up and she goes to the doctor. Now, when she goes to the doctor, she goes to the police department, she initially goes to the police department, she didn't sign any complaint. She comes back. She goes back to the police department. At that point, she signs a simple

assault complaint, disorderly persons. Mother and father come down. If that wasn't enough, she goes back the third time. This time, ladies and gentlemen of the jury, she signs an aggravated assault and another complaint, terroristic threats, some kind of restraint. She goes to the domestic court and she gets a restraining order, which is all her right. Now, at this point she refuses to have anything to do with Richard Highlander. Looking at it, she doesn't have anything to do with Richard Highlander.

Ladies and gentlemen of the jury, this is where the hurt begins. This is where the hurt begins. Here is a man who enters her front door, which obviously she opened. Here is a man who has indicated, through his tape, that while he was in that home, the conversations that they had, the future that he had indicated, that he indicated through his taped statement, ladies and gentlemen of the jury, that he was building his entire world around Gloria Simonelli. He was building his entire world. You may not consider it your world or his world, but in his mind, and that's what we're talking

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about, his mind, he was building his entire world around Gloria Simonelli. Gloria Simonelli refused to speak to him, refused to call him, refused to acknowledge his letters, refused to talk to any person that he attempted to intercede. And from that point until April 25th, Richard Highlander really had no contact with Gloria Simonelli.

Now, at that point, the prosecutor has presented certain witnesses. I think you recall who they were. Bobby Brooks. Bobby Brooks who knew Richard Highlander, Bobby Brooks who also knew Gloria Simonelli, and as you will recall, all these people that I'm going to name basically say almost the same thing, or they had the same tenor. Basically asked, Bobby Brooks indicated, during this period of time, Richard was drinking, that when they were in each other's company, that Richard would indicate to him his love, his feeling for Gloria Simonelli, that he would indicate to him his concern for Gloria, and he would also indicate that he didn't like the idea of Gloria taking out these charges.

Now, let's get to the charges.

There was no real fear of jail as jail. No real fear of jail as jail. Nobody wants to go to jail, but what the concern was is, why do you take me in, why do you allow me to lay with up for six months, why do you allow me to spend my money on you for six months, why do you make love to me for six months, then all of a sudden, because of a smack, I am now on the street, I have an aggravated assault, I am now facing probation, and above all, ladies and gentlemen of the jury, you're just taking my life, you're taking my world, you're taking everything that I have worked for from me. That's the guts of this thing, not that he wanted to stop Gloria Simonelli from testifying, not that he was frightened of jail, not that there was premeditation to kill Gloria, because I think, as you see through this entire situation, his main thrust, ladies and gentlemen of the jury, was not to harm her, not to harm her but to talk to her. Gloria, why would you do this to me after all that we have been through. That was the thrust, just talk to me, can you talk to me for five minutes and just tell me why. And in his mind, ladies and gentlemen of the jury, he

thought that he was entitled to that. Just tell me why, why would you destroy my world the way that you have: What did I really do to you to deserve what you're doing to me.

Now, as we go back to Bobby Brooks, Bobby Brooks is indicating that Richard was intoxicated, that he made threats, that he was going to kill Gloria, what he was going to do, also indicated every time he made these threats he was intoxicated, but when you listen to Bobby Brooks and you get right down to the guts of what was said, Bobby Brooks couldn't really tell you why or what really upset Richard that much, the most. He really couldn't tell you what it was. He said from the stand, I can't say, two or three times. But what he also told you is that Richard didn't -- he wasn't normal. He wasn't the normal Richard. He didn't look like he could come back to normality, was the word that he used, that he was out there, that this pressure that Gloria -- and may have been all unintentionally, had thrust upon him, had taken him from the world of reality.

The other thing I think is very

important a that Mr. Brooks indicated, I asked Mr. Brooks a question. "Why, or just before the incident of the shooting, what did -- what did he say?" And his answer was, "He told me, he described how he killed her, that he did it. He described how he did it, as far as her walking out with the gentleman, out of the Greenhouse, and that he wanted to speak to her, and she said no, and he pulled out a gun and he shot her and she went down to the ground and she said, oh, my God, I don't believe this is happening, and he told me he shot her again in the chest." Even with everything that Bobby Brooks told you about his threats, when you get right down, ladies and gentlemen of the jury, to the night of the 25th, this is what he tells Bobby, that's what he told Bobby Brooks. "I wanted to talk to her, and I saw the gentleman and I commenced shooting."

The other person, really only one person who was with Richard Highlander all day, all day long on April 25, and that one person was Mickey Chambers, and I think Mickey Chambers is probably one of the most important witnesses in this case. Mickey Chambers described for you, ladies and gentlemen of the jury, how he

met Richard about six o'clock that morning while he was working and he got off about nine o'clock, and what transpired from nine o'clock up until they went to the Port Authority in New York City.

And while you're thinking about Mickey Chambers, let me say this to you, Mickey Chambers wasn't charged with anything. Mickey Chambers wasn't charged with anything, accessory, nothing, aiding and abetting, nothing, which would indicate that whatever Mickey Chambers said, the police authorities believed. Mickey Chambers told you, and obviously told the police authorities, as he indicated from that witness stand, that he had no knowledge, no knowledge that on the 25th of April that Richard Highlander was going to kill Gloria Simonelli.

Now, Mickey Chambers has indicated that he was paid three hundred dollars to drive Mr. Highlander, and I'm going to talk about that. You recall the prosecutor standing up in his opening statements and talking about a paid driver, a professional driver, which would give the impression that somebody was paid to take

him down to kill the girl and to get him out of town. Do you really believe that? The man was never charged: Do you really believe it, that he was a paid driver to drive him down to Margate, to shoot this girl and leave town. You can't believe it. He also indicated to you, he being Mickey Chambers, that the three hundred dollars that he received in his course of driving limousines, you know, give or take a few dollars, was about average. I think the main concern about Mickey Chambers is that Mickey Chambers described to you, ladies and gentlemen of the jury, that during the full course of that day, the drinking, constant drinking of Mr. Highlander from nine o'clock in the morning, the use of drugs, he indicated nine o'clock in the morning they went on the Boardwalk and they started to drink. They left the Boardwalk, they went down to Moishe's place. They were in the car. When they rented a car they came back and they cashed a check, they went to Piggy's and they were drinking. They went over to the Crab Trap, they were drinking. When they rode by the Greenhouse the first time looking for Gloria, they saw the car, they circled, they left. And

what did Mr. Highlander say at that time? It's indicated on his tape. He had thoughts that she was in the bar picking up somebody to go to his house, to go to his bed, then he had to get a drink and he went to Margate, he went to -- not Margate, he went to Atlantic City, he went to Piggy's, they sat at Piggy's for a couple hours and they drank. Mr. Talasnik was asking questions, what time were you intoxicated, was he high, was he drunk. They were saying we were high. They then left Piggy's and they went to what they call Fat Nick's (sic) house. You recall in Fat Nick's house they were using drugs. In fact, they were shooting cocaine and heroine. Now, at that point, Mickey Chambers indicated to you, without equivocation, that when they left Fat Nick's house they were high.

Now, the prosecutor went through a lot of questions, did you understand what he was saying? Did he act like he knew what he was talking about? Have you ever seen two high people talk together? One understands the other. They were both high, they were both, they were both shooting up, both drinking all day long, and they went down to Margate. Before

they went to Margate, Mr. Chambers stopped, he made a stop. No question about it, he made a stop at Rufus'Duff's, it's left at Rufus Duff's. He put the gun in the car. They questioned Mickey Chambers extensively about that, and he said, as far as I was concerned, he was picking up belongings, I was taking him to New York so he could go on down south, or wherever he was going, and that was part of his belongings. But I think the main question that you have to remember when it comes to Mickey Chambers is, Mr. Chambers, did you plan to go down there and kill Gloria Simonelli, and his answer was unequivocally no.

The other thing I think is very important, when you talk about the testimony of Mickey Chambers, "Mr. Chambers, when you got there, when you got there, did you know that Gloria would be coming out of the back door. No." And in fact, he corrected m, he says, "I didn't say that. I said we didn't see her when we drove up, but as I was going through the lot, she was coming out the back door." Just by coincidence, ladies and gentlemen of the jury, that she was coming out the back door. It

wasn't pre-planned. I asked Mickey Chambers, "Mickey, did you know it? No. Mr. Chambers, what was the reason that Richard got out of that vehicle? He wanted to talk to her, if possible?" There is no indication at the time that he drove up in the lot, and this is the only man that's with Richard Highlander now, you can't forget about the rest, but this is the only man that was with him, this is the man who can tell us his last thoughts. He's imparted them to someone, else Mr. Chambers said "No, he wanted to get out and talk to her, if possible. And he saw the man." Of course, we know what happened.

The other thing that I think you should consider, and I'm saying this because of this alleged premeditation and planning and whatever, you know by now was all by happenstance. Richard Highlander didn't even know that Gloria Simonelli would be at the Greenhouse on the night in question.

You will recall very vividly that Mrs. Henderson testified that she was part of a party, that they went to Cousins in Egg Harbor Township to celebrate some secretary's birthday, or whatever, and that while they were in

Cousins, while they were in Cousins it was decided that everybody would take the party from Cousins to the Greenhouse, which just indicates, ladies and gentlemen, that Highlander didn't know it. He didn't know it.

The other person, ladies and gentlemen, that I think is very, very important, other than the tape that you heard, with regard to Richard Highlander himself, Judy Bryars. Judy Bryars is the aunt, as you know, of Mr. Highlander. Judy Bryars took that witness stand and she testified, no question, Richard indicated to her that he had killed Gloria. He indicated that when he was looking at the picture he would become emotional, he would cry, then sometimes he would be matter of fact. But the thing, ladies and gentlemen of the jury, I think that is very important about her just indicates the state of mind of Richard Highlander. He went over the same thing over and over and over and over, which just indicates, ladies and gentlemen, that when a person is constantly telling you the same thing over and over, to the extent you're tired of hearing it, it's on his mind, he's upset, and

the fact, ladies and gentlemen, words that she used, that when she saw Richard get off that bus, he was a troubled man.

A few questions I asked Ms. Bryars about Richard and his relationship, "Question: All right, he told you how she had destroyed his life? Yes, sir, he did. And he told you how he was concerned with her being with this man in the bar? I don't recall that. What did he tell you what he intended to do when he got out of the vehicle?" Which I'm suggesting to you is the heart of the case. "He was going to talk to her, and when he saw the man he picked up the gun. Okay. Question: Again. Okay. So he said when he got out of that car, just before the killing, that his purpose of getting out of that vehicle was to talk to Gloria." And she said "Uh-huh", which I take as an affirmative yes. So generally, the other person that had spoken to him about his intent just prior to this situation was Judy Bryars, and she has corroborated what Chambers has said, basically corroborated was Brooks has said, that when he jumped out of that car, his intent was not to harm Gloria Simonelli, but his intent was to

speak to her.

The other strange thing about this case, probably not strange either, we had several police officers take the witness stand, and these several police officers indicated to you what Richard had told them. Some had notes, some didn't have notes, but just think about them in generalities, ladies and gentlemen of the jury. The F.B.I. told you that Richard spoke to them, in particular, Agent Clemens, that Richard spoke to him for about an hour, and from that hour's conversation, he reads his report, he tells you what he said, and it took him three minutes, if that long. I suggest this to you, that when a person does that, when I talk to you for an hour about a situation such as this, and you put -- you capsulize, you put it in a capsule that only lasts three minutes, I suggest that the flavor that you get, or that the person reads in the paper today gets, is the flavor that the writer wants them to get.

Now, you sat here yesterday and you heard the tape of Mr. Highlander which ran for maybe an hour and twenty minutes, or whatever, and I challenge you to sit down and

capsulize that in a three minute dissertation and see if you can get the full flavor, see, because when a guy takes something and he doesn't take quotes, he may take a quote here and a quote there, and he only puts three minutes of something that's taken you over an hour, ladies and gentlemen, I suggest to you that you're really not getting the full flavor, and if you will recall, when I was questioning Agent Clemens about how this thing was done, he would tell you he would take notes, it was his determination of what was important, it was his determination what he would include, his determination what he will exclude, and he further indicated to you, ladies and gentlemen of the jury, that the thrust of what he was doing was to get a confession, which is natural when it comes to police officers, but I suggest to you, ladies and gentlemen of the jury, that when you hear that type of testimony, scrutinize it, scrutinize it very carefully.

You know, it's very strange that when you listen to his testimony, that's Agent Davis and Agent Clemens, they start talking about ski masks. I'm going to go in there now

and do it, Mickey Chambers saying no, don't go in now, wait till later, wait till it gets dark. When you heard the tape of the confession, when you heard everything from the mouth of Richard Highlander, did you hear any of that? When you heard the testimony from the mouth of Mickey Chambers, did you hear any of that? Did the prosecutor ever question Mr. Chambers about whether or not there was any testimony about a ski mask, whether or not he told him, we'll go back later on tonight, whether he told him that we're going to go down there and kill that woman. Was any of that elicited or even attempted to be elicited from Mickey Chambers? No. Because it wasn't there. It wasn't there.

Also, ladies and gentlemen, consider that when Mr. Highlander was initially taken in by the F.B.I. and questioned, he'd been on a run, working, drinking, snorting, and this is the condition that they found him, this is the condition they questioned him in. The next morning, here comes the local police, they say he looks well, he talked well, he was well-composed. I don't know if there was any

remorse. You heard the tape, you heard the tape. Was there any remorse? You heard it. I don't have to talk about it. He was fresh, he gets on the tape and he tells you, I haven't slept in days, it's driving me crazy, it's blowing my brains out. If you recall, at the end of the tape, what was his conversation? "Look at me, look at me, do I look normal? I'm out of my mind." He's telling the cops what he looks like, what he feels like, but they tell you, well, he looked well, normal guy, we didn't see anything wrong with him. Very calm, very collected. That's what you heard in all of them. But when you hear him, when you hear him, it belies everything, ladies and gentlemen of the jury, that you've heard up to that point.

The other person, I'll just touch on a few other witnesses then I'll move to the guts of the summation. Rufus Duff who testified. Mr. Talasnik indicated to you, and Mr. Duff said it from the witness stand too, that he was offered money, but when you cross examined Rufus, Rufus, this offering of the money, man, did you take that serious? I didn't take that serious. This man, this man knew me,

he knew I wasn't about to take it. It's just like somebody walking up to a friend, I'm going to give you something to knock somebody off, and you know when you say it, you know when you say it it means nothing. You know it's just talk. And Rufus indicated that he was just talking, and he indicated whatever he said about Gloria, he didn't take it serious. He didn't take it serious. And he is further indicates, just like the rest of them, ladies and gentlemen of the jury, man was intoxicated.

The other thing, ladies and gentlemen, I think you should consider is that Rufus Duff indicated that when he came to his house on the 25th, the other thing they came here for was to tell him what to do in terms of jobs. I want you to take care of a couple places while I'm out of town, which was normal, which doesn't indicate that the man's getting ready to commit any type of criminal activity when I'm telling you what to do the next day, or whatever.

The other thing, gun was picked up, no question. You think Rufus knew? You think Rufus knew? No. Rufus told you, Rufus

told you, he didn't know. You think he knew that this man was going to go down to Margate and to do something to someone with a gun, and say, here, you do it. No, Rufus didn't know.

You had the other two witnesses, Michael Reed, Richard Stewart. You use your credibility with regard to Richard Stewart and what that tells you about a man that sends a man an invitation in a jail knowing he's locked up. Why did he send an invitation? "I thought it was a big joke. I wanted to see him in a wedding in chains." When a man start talking like that, he sounds to me like he might be freaked out.

Michael Reed, Judge will tell you in terms of credibility, Michael Reed is a convicted dope dealer, so you get whatever credibility you want to Michael Reed.

Now, ladies and gentlemen, I got what I suggest to you is probably the most important part in this case, and that would be the words of Richard Highlander, the words that you heard that he iterated through the tape indicating to you his feelings and the reasons and his thoughts just prior to this murder. The

question is, "Okay, 5:30 in the afternoon on the 25th of April, did you want a coffee? Yes, thanks. You mentioned you saw the car. Yes." And ladies and gentlemen, you will recall, 5:30 was the initial time, first time that they went by the Greenhouse. Went around Monroe Avenue and, you know, I -- I really wanted to talk to her. No matter if it violated the restraining order that night, it went too far. I wanted to take my chances of talking to her. Okay? That's the way I felt that night. It's very clear, ladies and gentlemen of the jury, I really wanted to talk to her no matter if it violated the restraining order that night, and went too far, I wanted to take my chances talking to her. That's what he wanted to do.

And it goes on down here, "Question: So after you saw her car, you went somewhere with this other person. That was -- that other person driving the car. I told him to go get a drink because I -- I needed one." At that point, ladies and gentlemen of the jury, he's indicating to you that he needed a drink after he saw that car parked in that parking lot, thoughts running through his mind, whether

they be right or wrong thoughts, the thoughts went through his mind because he thought that she was there picking up another fellow. He needed -- he couldn't stop, he needed another drink. Ladies and gentlemen of the jury, that's when they departed from the Greenhouse Bar that first time and went on down into Atlantic City, stopped at Piggy's and commenced to drink. "Did you then do drugs? Then after that, I told the fellow, I said, let's get some coke, and he said, um, okay. I know where to go, and we went there and we had -- I was just snorting coke in the beginning and then I got real high and then I" -- the next question is, "Did you return to the Greenhouse?" And he goes on indicating that he did. "Question: So you told him before that something might happen?" And that question refers to Mickey Chambers, indicating to Mickey that something might happen if we go back to the Greenhouse. "I didn't tell him anything. I just, you know, I was going to go in, but the bar, I mean, I had made statements of, you know, crazy, wild statements, you know, before that, but always when I was drunk. I was feeling hurt and I've been taken advantage of and I was going

down more or less with protection, you know, because she made statements to me in front of witnesses before that that they had Mafia connections. Her uncle was in the rackets in New York, they could have my legs broke, that is the truth. I have a gentleman that was at the house and she made that. She also stated the fact that she would have a body guard with her, around her, you know, that had effect if I, you know, would bother her, and, um, I mean, I was high, I mean, I was crazy. I didn't know what. I was going to a place where she was and didn't know who she was with."

Ladies and gentlemen, basically the importance of that statement is that he didn't know who would be there or what would be there, and indicated he had an gun for whatever protection.

And the other thing I think is very important in that sentence is he admits to the police that he had made wild and crazy statements about what he intended to do to Gloria. He indicates that they were wild, they were crazy, and that each time they made these statements that he was in a state of

intoxication.

And the cop goes on, he says, so, well -- I'm sorry, not a cop, Officer Juliano, "So it was kind of her turf? Yeah, you know, I mean, she hung out there in the summertime and stuff like that, and I never went to the Greenhouse, I didn't know, you know, and then goes on. Was that her favorite place? Was a favorite place of Gloria's? Yeah, she went there every day after she got off the beach, and as we pulled in the parking lot. Just as we pulled in the parking lot, she was walking out or the place and I had -- I showed you earlier, I demonstrated when I originally got out of the car I didn't have the gun in my hand. It was like a three to four second thing. I was going to go in and just see." That's indicating to you, ladies and gentlemen of the jury, that when he went down there, in his words, that he wanted to see her, that he had initially jumped out of that car without a gun, and he puts a space of three or four seconds between the time they jumped out of the car without a weapon to talk to her and the time that he got back in the car and grabbed the weapon. He goes on to say, "I

was so high at the time, I didn't care really what happened, if I got into a fight or who she was. I mean, this was it. I wanted to talk to her. I wanted to straighten my life out, I was on wit's end. I, you know, I just, you know, that I wanted to be with her. I wanted to talk to her, and as she walked out of the door, um, there was another guy with her, and they were headed toward the car. It's one that, you know, that I purchased for her, and all that ran through my mind was there she goes with another man after everything I did and getting into the car I bought, and I reached under the seat of the car and grabbed the gun out from underneath the seat of the car and cocked it, the hammer on the gun. I walked around the car, she approached the car, I shot her once and she -- and after she said, oh, no, when I drew the gun and I shot her and she hit the ground, she said, I don't believe this is happening to me, and I shot her again, and then I just went into a frenzy. I shot at the guy. I, you know, I didn't -- I just was shooting, you know, I mean, I was like a maniac, a mad man, you know, because everything -- my life was destroyed.

You know, I really feel now that, you know, she, you know, I feel that she ruined my F-ing life."

That, ladies and gentlemen of the jury, tells you, in his words, exactly what happened, and as I'm reading this, of course, as you heard it from the tape yesterday, you know, his English is not that good, he's disjointed, some of his sentences, which indicates a man who is not really in complete control of his faculties, and that indicates to you right there exactly what happened, that he drove up there to talk to her, that he jumped out of the car, and it was testified that the man was about fifteen foot behind Gloria, initially, that when he noticed the man with Gloria, he went into this jealous, emotional state, rage, whatever you want to classify it, and at that point, saw his life being destroyed, and he pulled the gun out and shot him. And I say all of that to say to you, ladies and gentlemen of the jury, it was not premeditated. He was not laying there in wait, he did not know what was going to happen.

The other thing that you should consider at this time, too, ladies and gentlemen of the jury, two items which have been --

several of them, I have two here, number five and another picture, number three, and all that will do is to give you the impression, not the impression, it will give you the impression of what that parking lot looked like. That was a well-lit parking lot. In fact, Tanya Martin indicated to you the light, that she had no problems seeing. It was well lit. Just further indicates to you, ladies and gentlemen of the jury, that if you're going to plan a homicide, you don't walk out in the middle of a parking lot that's well lit and shoot somebody, not knowing who's there and not knowing who's looking. Just further indicates it was unplanned, it was unpremeditated, it was a spontaneous act.

The other charge that the defendant's been charged with, it's attempted murder with regard to Patrick Sullivan, and as you've listened through what I've read here in the tape, of course, the tape will be in the jury room with you, I don't believe Mr. Highlander took a shot at Patrick Sullivan. I don't believe Mr. Highlander is cognizant of what he did once he made -- once he pulled that

trigger the first time. If you listen to the testimony of Tanya Martin, Tanya Martin indicated that she did not see the first shot, but she indicated she heard the first shot and indicated it struck Gloria. She indicated that the defendant, at that point, walked up to Gloria and shot at Gloria two more times, which would indicate to you, ladies and gentlemen of the jury, that's the three shots. Mr. Sullivan indicates that he saw the first shot, as it struck Gloria, he saw the fire come from the nose of the gun. He initially indicated the gun was pointed at him, but through cross examination, I said, "It was pointed at you, did the -- was the bullet fired at you? No. That bullet was fire at Gloria Simonelli." And he said, at that point he hit the ground, he just dove face down. Now, if you put his testimony together with that of Tanya Martin, and also that of the doctor, Doctor Jason would indicate that Mr. Highlander walked up and shot at Gloria three times. He didn't intend to kill Patrick Sullivan. He didn't intend to hurt Patrick Sullivan, because as you know by now, he walked right up on Gloria, and if he had wanted

to hurt, or if he had wanted to shoot Patrick Sullivan, he was lying prone on the ground, lying prone on the ground, there would have been no problem to turn around and shoot Patrick Sullivan. That wasn't his problem. Patrick Sullivan wasn't his problem. His problem, as far as he was concerned, was Gloria Simonelli, and that's where he emptied his anger and rage, emotional rage.

Cop goes on and he says, "I understand what you're saying" and then Mr. Highlander continues, "You know, I mean, everything I worked for, I put everything into Gloria, you know, and I, you know, I F-ing nailed her, that's all. I mean, you know, I didn't know what the F to do. I mean, what am I supposed to do. I got people telling me I'm going to go to jail, I've got attorneys telling me I'm going to go to jail, you know, and I got cops up my ass. I got the Lieutenant, his wife or both, I mean, I can't go near the girl. He's got my picture all over Tropicana. I mean, I don't deserve this F-ing shit, you know, and I felt, I felt like, you know, what she gonna -- what she gonna -- just go out and she gonna have

a great life and I'm going to F-ing jail because I got in an argument with her. Everything I worked for, you know, that's the way I feel about it, you know, and I was pretty whacked out when I did it." Which further indicates again, ladies and gentlemen of the jury, that he thought that his world, no matter how big or how small, that his world was being destroyed.

The other thing, ladies and gentlemen, that I think you should consider here is that he indicated that he was whacked out, and as you recall, from reading or listening to the testimony, that he indicated himself that he was under the influence of drugs and alcohol, that he actually really wouldn't of had the guts to do what he did.

This next paragraph is also very important. "Do you remember how many times you shot her?" That's the question. "You know, it was dark, you know, all I just remember is just pulling the trigger. I blanked. I didn't -- I didn't even realize when I was stopping. It was just like, I just started shooting, just pulling the trigger, and I didn't say anything to her, you know, just saw her there, and rage went

through my F-ing head." Generally, what I'm indicating, he doesn't know if he shot at Patrick Sullivan, not from listening to this, from listening to this paragraph. He just indicated that the man went out of his mind, just started shooting. There was no intent to hurt anyone except Gloria Simonelli.

Just read one last thing for you then I'll close. It says "Rick, I want to ask you, did you kill Gloria Simonelli because she broke up with you?" And he goes on to say, "I didn't kill Gloria because she broke up with me, I broken up with several girls and I've had problems with one particular girl before that I was with for four years because she was cheating on me. She wasn't being quite honest with my parents or me. I caught her several times with another guy, and I didn't kill Gloria because she broke up with me. That wasn't it. I wasn't -- I could handle just a split-up, I was man enough two weeks prior to when her mother came down. Gloria wanted the relationship, we all sit down and talked about it, we wanted to try again. I think that Gloria used her parents and my drinking problem, with the help of the police

department, to more or less maybe put me out of her life. I got it through the ringer, so to speak. I mean, I give her several thousand dollars through bills, never asked what the bills were. I felt that I made -- I built my life around Gloria and I felt that I was more sincere, honest, straightforward and never, ever cheated on that woman in any way, would never ever see anyone hurt her or bring harm to her or anything, you know. I mean, see, you know, after you lay in bed with somebody and you make love to them and you hold them and they tell you they love you and you -- you have feelings for one another, and you start caring about someone, I don't care if it's it six months or six years, you know, you put your whole life into them, like I did her, you know, you turn around and she might as well take a gun and shoot me, you know, put me in jail, is the way, you know, that I look at that. She took my life, you know, and I felt that she took my world away from me."

Ladies and gentlemen, I think that that last phraseology of what Mr. Highlander thought, that his life was being taken away from him, taken away from him by the person that he

loved most, Gloria Simonelli. Ladies and gentlemen, when he went to the bar to make one final attempt to talk to Gloria, saw her in the bar, went through his mind that she was with another man, I'm indicating to you that those thoughts, past relationship, that it was sufficient provocation to put Richard Highlander into an emotional state that he was unable to control himself for that brief moment. During the course of his uncontrolled emotional state, unfortunately, he took the life of Gloria Simonelli.

I think from the things that the various witnesses have stated, the way that you've heard him on the tape, his remorse, he's indicated to you that drove him crazy, ladies and gentlemen, I think that at this time, justice would dictate that the only crime that Richard Highlander is guilty of was the crime of manslaughter. Thank you.

THE COURT: Ladies and gentlemen, before I ask Mr. Talasnik to speak to you, we're going to take a very brief recess just to let everyone get organized.

Before I do that, I have -- I

forgot, when you came in a few minutes ago, before Mr. Davis spoke, to ask you something that I had meant to ask, before and I forget it. Generally, I'm going to ask you now. I would like you, by a show of hands, to tell me if any of you, during the course of the trial, at any time up until now, has seen or read or heard or discussed any news accounts of any kind with respect to the trial? The record will reflect nobody raised their hand. I will, therefore, take a brief recess. It will be very quick. Don't go anyplace, just get yourself organized. We'll be right back.

(Whereupon Court takes a brief recess at 11:35).

(The following is heard before the jury at 11:45).

THE COURT: Mr. Talasnik.

MR. TALASNIK: Thank you, Your Honor. May it please the Court, Mr. Davis, Mr. Preston, ladies and gentlemen, let me start by giving you a couple of examples. Let's assume that someone is out for an evening and they have a child that they leave at home with a babysitter. Let's further assume that the

person comes home, that you come home for the evening after having had a pleasant evening, when you open the door, your child comes running up to you, emotionally distraught, throws his arms around you and tearfully tells you that the babysitter has just beaten her with a leather belt, and you look at the child and the child is shaking and the child is crying and the child's clothes are torn across the back and the shoulders and the child is bleeding, and you look up and you see the babysitter standing right across the room from you holding the leather belt in his hands, and in a fit of rage, you pick up an ashtray that is sitting right on the table next to you and you approach the babysitter and you smash the ashtray over the babysitter's head killing the babysitter. That, ladies and gentlemen, is a heat of passion provocation manslaughter. All the right elements are there. There was provocation, that is to say, there was contact by the babysitter that was of such a nature that it provoked rage. The provocation was reasonable, certainly any reasonable person would be provoked to a rage by the fact that a child of theirs had been

beaten by a babysitter, and the killing was committed in the heat of that passion, because in those few instances, immediately upon learning of the provocation, before reason would have a chance to take control over the man or the woman, he acted by picking up the ashtray and immediately assaulting and killing the babysitter, and there is passion provocation manslaughter.

But now let's change the facts a little bit. Let's assume that after the child runs up to you and tells you what has happened and you see the babysitter standing there, you simply point at the babysitter and say, you get out, and the babysitter leaves, and then you begin to think about what has happened and you start to get upset by it. This child, after all, is your whole life, and that person has hurt the person that I love, and so you go down to the police station and maybe you sign a complaint, and maybe you're a little bit unhappy about the way the police treat you, because they may have discouraged you from signing the complaint, and that makes you even more angry, and then you go to Court a few weeks later and

you see the person who abused your child take the witness stand calmy and say, oh, I never did anything, and so you get even more angry, and then you go home and you see that your child is beginning to react in a negative way as a result of what has happened, and here is your child, the love of your life, and there is a problem with the child, and the abuser is walking the streets, and the abuser's having a great life and not paying any price, and so you decide to do something about it, and fully six weeks after the provocation, you decide that maybe you better go see this person, maybe you'd better go take care of things by yourself without regard to what the law says, and maybe you better take a gun with you when you go to take care of this person, and so you get up in the morning and you get in your car and you drive around and you look for the babysitter. You try to find the babysitter where he lives, try to find him at his job, and the only thing you don't know when you start out that day is exactly where you're going to find him and when you're going to find him. Well, you find the babysitter's car in the parking lot of the bar, it's around 5:30, and

you decide to wait until dark before you deal with him, and some three hours later, after having spotted his car, some three hours later, a period of time during which you had more chance to get angry at this person and to be disturbed that he's in there having a great life and your child is at home distraught, and three hours during which time you're able to get the gun and load it and put it within easy reach, you return deliberately to that same location to look for the babysitter, and when the babysitter walks out of the bar, unarmed, you walk up to him and you kill him and you shoot him twice and he dies. That, ladies and gentlemen, is not passion provocation manslaughter. That is purposeful, planned premeditated murder. There was no provocation at the point when the shooting occurred. The only thing that approaches provocation is the babysitter walking out of a bar, a public bar at 9:30 at night into a public parking lot and he's unarmed. That is not the kind of conduct that can give rise, or that the law recognizes as reasonable provocation. Nor was his emergence from the bar unexpected, because you've been out looking for

him all day and you'd seen his car there three hours before and you went there with a gun. By the fact that you are angry, by the fact that you are hurt, by the fact that you think, in your mind, that person deserved to die, that does not convert a murder to a heat of passion provocation manslaughter. The fact remains that too much time has passed between the provocation six weeks ago, between sighting the man three hours ago and your walking up to him and killing him. You must not confuse motive or reason to kill with a killing that is committed in so close a proximity to a provocative act that you don't have a chance to think and reason about what you're doing.

Let's go to a second example. Man is a police officer and he works a normal eight to four shift. One day he decides to go home for lunch unexpectedly and he has his service revolver with him. He walks into his house and he sees the wife that he could, or at least thought he could trust, and she's in bed with another man. In a fit of rage, he instantaneously pulls out the gun, aims it at his wife and the adulter and shoots both of them

dead. That, ladies and gentlemen, is passion provocation manslaughter. There was a provocation, the vicitm's adultery. It was a reasonable provocation, that's the sort of thing would set any reasonable man off, and there was an instantaneous reaction to that provocation without any chance to think about it, to deliberate about it, to make any conscious decisions. It was almost a knee jerk reaction to what he was seeing that the gun would be pulled and the person would be shot dead.

But now let's change the facts a little bit. The same husband seeing the same thing simply points at the wife and says, get out, and then he begins to think about it and then he begins to run it through his mind. This is the woman that he invested his life in, how could she treat him like this, and he gets angry, and then a few days later he gets a divorce complaint in the mail where she is accusing him of all sorts of things that are untrue, and he gets even more angry, and then he gets served with an order from a Court saying that, during the pendency of the proceedings, he's not even allowed to talk to her, and that

gets him even more angry, and he sees that she's out there with her new friend having a great life, and he's stuck at home with the bills, and there is an injustice in this mind, and he determines that he's got no trust in the Court system to deal with that injustice, he's going to take care of it himself, and so fully six weeks after catching the wife in the relationship, he goes out looking for her and he goes out looking for her with a gun, and he drives around all day checking out the places she goes looking for her, and then he goes to her job looking for her, and then he checks out the night spots that he knows that she frequents, and about 5:30 he finds her car parked in the parking lot, and he decides to wait until dark, and fully six weeks after the provocation, fully three hours after he has already seen her car in the lot and knows she's in there, and during a period of time that he's thought about it and he's thought about it and gotten worked up and angry about it, he then goes back, and at 9:30 at night, sure enough, she walks out of the bar, he gets out of his car, walks up to her, shoots her once, and to

make sure she's dead, shoots her again. That is not passion provocation manslaughter, that is purposeful murder. You cannot convert a purposeful murder into passion provocation manslaughter simply because it was done out of love or out of unrequited love or being jilted by a love or a lover. The law only recognizes passion provocation manslaughter when there is the provocation, it's reasonable and an instantaneous knee jerk reaction occurred resulting in death. When the provocative act occurs six weeks before the killing, all of the passion that the killer may develop, all of the anger, all of the hatred that may result in the killing, is no longer passion provocation, heat of passion. What it is is a motive or reason to kill.

And now let'ts get to the facts of this case. Because what has taken place this morning and what has taken place throughout this trial, I suggest to you, is a deliberate attempt to blur that important distinction between passion provocation manslaughter and a knowing purposeful murder committed by someone who had a reason or motive to kill.

Let us take the defendant's version, the way he wants you to take it, the version that he put on the tape so that it could be played before you as part of the State's case, and let's assume that everything he says in that tape is true, something which I suggest is not true, but let's assume that it is, he doesn't tell you that after having a loving relationship with this girl for six months that he comes home from work, that the two of them got drunk up together, that they have an argument, that she kicks him out of bed and throws him down the stairs, and in an instantaneous fit of rage, he picks up some item and kills her on the spot. Even under his best set of circumstances, that's not what he says happened.

What he says happened is this. He's in love with this girl. She is apparently, however, not a very nice person. She has him move in with her so that she can take advantage of his money, and she leads him on into thinking that she's going to marry him, she's going to have his children, they're going to build a house together, but really she's one of these

conniving materialistic-type women, and all she wants to do is to take him for his money. And after getting as much money out of him as she thinks she possibly can, she uses as an excuse some problem, and the two of them get involved in a fight and she uses this as an excuse to get rid of him. And it's in the height of his busy working season, and here he is thrown out in the street and his clients can't call him on the phone and his precious two hundred dollar shirts are in trash bags, and his life is destroyed because he had built his life around this woman, and she unceremoniously throws him out, and he's upset about it. And to make matters worse, to add insult to injury, literally, because of his famous busted ankle, she goes and signs a complaint against him, and to make matters even worse, she then upgrades the complaint to aggravated assault, knowing that it will violate his probation, and that makes him upset and that makes him angry, and he thinks about it some more, and then to make matters worse, she goes to a family court and gets a restraining order that says he's not even allowed to talk to her, he's not allowed to have any contact with her,

and so he can't even try to persuade her to be fair with him, to explain why she's throwing him out so unceremoniously, and that makes him upset, and that makes him frustrated, and so he goes to friends and has the friends try to contact her and she won't respond to them. He writes her heart-felt letters, love letters, and she tears them up and scoffs at them, and then to make matters worse, a few weeks after the incident, she's in a family court testifying against him, looking like a wild woman, accusing him of all sorts of things, and he can't talk back to her, and his lawyer doesn't do a good job, and so he thinks about it some more and he gets more upset about it, and he can't get to her, he can't convince her to drop the charges. He can't convince her that he still loves her and she's destroying his life, and he gets drunk a lot and he stews about it and he thinks about it and he gets worked up about it, and then finally, after he can't take it any more, six weeks after she has thrown him out, six weeks after she's signed complaints against him and gotten a restraining order against him, he decides he's going to give it one last shot and

he's going to go talk to her, and it just so happens that on the day he decides to talk to her, he goes and recruits an acquaintance of his that's a professional driver, and it's just a coincidence that he then puts out the money for a car with enough of a deposit so that the car can be used to take him up to New York, and it just so happens he tells that driver that I want you to drive me around today, and eventually you're going to take me to New York, and it just so happens that during the course of the day he spots her car, and then it just so happens that after spotting her car he goes and retrieves a gun that he had deliberately left at a friend's house and takes it back three hours later after seeing her car, after knowing that she's in the bar, and decides that he's going to go up to her with that gun just to talk to her. And that the sight of her coming out of the bar accompanied by the fellow down the street, who she's going to give a ride home to, provokes him to the point that, instead of talking to her, he kills her. That's the version, that's the best version that the defense wants you to take into account, and even under that set of facts, from

the defendant's own mouth, he is guilty of purposeful murder. He had six weeks to stew over what the victim had done to him in his own mind. He had six weeks to try all the measures that he could think of, reasonable, rationale measures, to try to get to her, six weeks to come to the inevitable conclusion that to give it one last shot he'd better go find her and he'd better have a gun with him. Under that version of the facts, there was no provocation on the day of the killing. The only provocation was that the victim happened to walk out of a public bar at 9:30 at night, unarmed, with the fellow down the street that she hadn't seen for years and she was going to give him a ride home. That's not the kind of provocation that can legally be permitted to reduce a murder to heat of passion manslaughter.

The provocation, such as it was, was in the defendant's own mind, because he had stewed about everything that had happened for an entire six week period. He's the one who deliberately went out looking for her that day. He's the one who went out there with a gun to see her that day in a car with a driver capable

of taking him away that day after the killing. He cannot claim surprise at seeing her come out of the bar when he had seen the car three hours before, the person that he looked for all day, the person that he had the gun to go talk to after he knew that her car would be there. The only coincidence of the entire day had nothing to do with the shooting, it had to do with where she would be found and at what time he would decide to execute her for the high crime of falling out of love with him, and whether there would be anybody there to witness the event. The coincidences do not give rise to passion provocation manslaughter.

Even assuming that he's telling the truth, even assuming that he loved her, even assuming that she ruined his life and was mean to him, that is not a -- a legitimizing reason to kill. It is a reason to kill, and the State put all that evidence in because it shows he had a reason and a motive to kill, but that the motive may be love, or rejected love, does not magically reduce the crime from a purposeful murder to a heat of passion manslaughter. The law would not permit that to happen. It would

demean the life of every person who is killed in the name of love. And it would certainly demean the life of Gloria Simonelli if the crime for falling out of love with someone is that he can be executed and a killer, instead of being guilty of murder, is only guilty of passion provocation manslaughter. The law won't permit it.

Ladies and gentlemen, I suggest that the facts don't permit it either. I suggest that the statement of facts that the defense wants you to believe, that the version they put before you in the tape recorded statement is essentially untrue. I suggest to you that it was contrived, that it was a conscious decision by the defendant that if he couldn't beat the charges, at that point in the investigation, he was at least going to try to cut his losses by minimizing his own responsibility. Keep in mind that when he gave this statement, this tape recorded statement, he had already been advised of his rights five times, twice by the F.B.I., three times by the officers from the Prosecutor's Office, and on each occasion he was told, what you say will be

used against you in a court of law, so he knew that the way to begin to put together a defense was to start on that tape.

Look at it from the point of view of the defendant. At the time that he's about ready to give that tape, he knows he's not going to beat the killing, he knows that he's already admitted the killing to his Aunt Judy, he knows that he's already admitted the killing to the F.B.I., and he knows from having pumped Lieutenant Welsh for information at the airport that the State has all of this other evidence against him. You remember that conversation at the airport, that Rich was very concerned who dimed him out and what evidence the State had, and so he decides if I can't beat it, I'll at least reduce my degree of blameworthiness by doing a number of things.

The first thing he does is to take control over the interview process in the tape. You remember Investigator Juliano said that the only way that the defendant agreed to give a taped statement is if he was in charge, if he could tell his story his way and in his own time. And with that assurance, sure enough,

Rich is making the decision that, yeah, I'll give this tape recorded statement, and you remember that the questioning at the very beginning is very open ended and he's permitted to go on at great length about his relationship with Gloria and his relationship with her parents and with going to pick up ceiling fans that he has spray painted for Gloria's apartment and all that kind of stuff, and then as if he realizes that the officers are looking at him kind of funny, he says, now this is important to the investigation, I mean, what I'm saying, I feel that it's important. Had nothing to do with the investigation into the killing on April 25th of Gloria Simonelli, but he felt it was important, important to his fabricated defense.

You'll notice that throughout that tape recorded statement, Rich gave the answer that he wanted to give without regard to what the question was. The question could have been about spotting the car at the Greenhouse, and yet Rich had to revert back to when he first went out with Gloria and they went to dinner at someplace called Scannichio's. So he was in complete control, he was bound and determined

that he was going to put his information in front of these investigators, and ultimately, before you, the way he wanted it to sound. Why else would he have spent so much time trying to trash the victim's reputation? I mean, he painted her as a junkie, as an alcoholic, as a deadbeat, as somebody who used people for their money and who certainly used him for the money. Why would he go to all the trouble to paint her that way if it wasn't that he was trying to justify the fact he had killed her, tried to make, first the officers and now you, believe that she somehow deserved to die.

But all of that, ladies and gentlemen, is untrue. The picture that he paints of Gloria Simonelli in that tape recorded statement bears no relationship whatsoever to the girl who was described in this courtroom by her parents and by her friends, all of whom described her as a beautiful person, somebody who was loving, somebody who was outgoing, somebody who was certainly financially independent enough that she didn't need Rich Highlander. She was industrious, she worked. She changed jobs so she could make more money.

She was able to make enough money to buy a condo and then reimburse her father for it, able to make enough money to help her brother buy a condo, able to make enough money that her credit rating permitted her to lease a car that she paid for with her own checks that you'll see in the jury room, stable enough that she could afford to charge the trip to Colorado on her credit card, which you'll see when you go into the jury deliberation room. She didn't need Rick for that. But Rick decided that, in the context of this free and open statement, that he got to trash her reputation to try to justify what he had done to her.

He also tries to reduce his own culpability by bringing intoxication into it, that somehow because he took drugs on the day of the killing, because he drank during the course of the killing, that he really shouldn't hold him responsible for his conduct. Unfortunately, his memory for detail belies the level of intoxication that he tries to inject as a further effort to mitigate his own responsibility.

He talks about how much he loved

Gloria. You know, the statement goes on for thirty pages. One page talks about the killing, probably ten or twelve talk about how much he loved Gloria, but so what. Love and the loss of love is not a legitimate reason to kill. It's a reason. All right, it might have been his, o at least that's the one he wanted you to believe, and it may have been his motive for killing her, but it has nothing to do with the passion provocation manslaughter concept that he's trying to have you buy, but yet he spends four, five, six times as much time talking about his lo[illegible] of Gloria, again in an effort to try to justified what he has done.

And then there is this blame thing that he gets on. I mean, in that statement he blames just about everybody and everything in creation for the death of Gloria Simonelli except himself. I mean, it's Gloria's fault because she threw him out, and it's Gloria fault because she wouldn't accept his love letters, and it's Gloria's fault because she wouldn't talk to the friends that he tried to have contact, it's the family court's fault because they put an order in effect so he wasn't allowed

to talk to her, it's the Ventnor cop's fault because he didn't like the way they arrested him, and it's the family court's fault again because they permitted Gloria to testify, like a wild woman, and it's the Prosecutor's Office fault because they upgraded the charges and indicted him for beating her up, and it's Mickey's fall for not stopping him when he went to get out of the car with the gun. It's everybody's fault but his. He's the one who got the gun, he's the one who went looking for her, he's the one who got out of the car, walked up to her, shot her, and because he didn't know whether she had been hit, shot her again just to make sure. All of that fault business was all, again, put in by Rick Highlander to divert attention from him to try to reduce his level of responsibility in your eyes. So a lot of that statement, I suggest to you, is untrue.

You know, I agonized over having to play that statement for you because I knew that all of that untrue stuff was in there, and because I knew that there were times that, genuine or feigned, there was emotion that was shown on that tape. But ask yourselves, who's

Rick Highlander crying for? Was he crying for a dead girl; was he crying for the parents of that dead girl; was he crying for himself because he had been caught and because this was something he wouldn't be able to talk his way out of this, something that he wouldn't be able to get away with?

Even with all of those lies and that deception, the statement was played because he let loose some true facts. For instance, he gave up the fact that he was aware that Gloria had signed complaints against him. He gave up the fact he had been served with domestic violence restraining order and he knew what it meant. He gave up the fact that he knew he had been indicted and that the indictment was based on Gloria's charges. He even gave up the fact that he was afraid of going to jail and that the victim was the one who would be putting him in jail. "Question: Did you feel betrayed? Answer: I felt that Gloria had -- was out to destroy my life. For what reason? Question: You felt because there is a good possibility, in your own mind, that you may be going to prison? Richard Highlander: I knew I was going to

prison. That this -- this would really destroy your life? Richard Highlander: Exactly. Question: So at this point you were sure that you were going to go to prison? Richard Highlander: Yeah, yeah, I was, and I was -- I was scared, you know, so they -- I was upset. I had my business I was running, and then I felt I was falling to pieces. Question: And you felt that Gloria was responsible for this? Answer: I felt Gloria was being unnecessarily cruel to me. I thought she wasn't using her head, I thought she was being influenced by people. Question: Do you think she was responsible for this? Answer: Do I? I know Gloria was responsible. She's the one that signed the complaints against me, you know."

So he even gave up, through all of the deception, that he was aware that she was the one that would be putting him in jail. He gave up the fact that he knew, for the six weeks after the assault, that she was through with him, that she didn't want him back. He gave up the fact that he knew that she frequented the Greenhouse Restaurant. That came to you independently through Terry McCabe and is now

verified by the defendant, that he knew that that was one of the places that she went and so it was one of the places that he directed Mickey to look for her on the day he decided that she should die. He gave up the fact that he spotted the car first and that he recognized it as her car before he went to his friend's house to pick up the gun. He gave up the fact that he shot her twice, that the second shot was because he didn't think that she had been hit, and he even gave up the fact why he shot her. "I didn't kill Gloria because she broke up with me, I broke up with several girls. You turn around and she might as well take a gun and shoot me, you know, put me in jail, is the way, you know, that I look it that. She took my life, I felt she took my world away."

In the context of putting him in jail. "All I wanted to do was to not stay in jail, you know. I could have handled breaking up with her. I could have gotten over it. I mean, she knew what she was doing to me, she was well aware. She once told me when a guy signed a complaint against me that worked with me that if anybody ever wanted to get me was to violate

my probation, okay, and she made the statement to me, and I believed Gloria. She came and she went down to simple assault thing, down to the municipal court knowing that it would jeopardize my probation." So he even gave up the fact that he knew why he killed Gloria. He told the officers that.

And perhaps most importantly of all in this statement, he told you that he shot at Patrick Sullivan and why he shot at Patrick Sullivan. Think back to the example I gave you about the heat of passion manslaughter where the officer walks in and finds his wife in bed with another, and in a fit of rage, he kills her and he kills the man out of anger, out of jealousy, out of all of that. There was never one word in this statement that when he shot Patrick Sullivan he shot Patrick Sullivan out of jealousy. In fact, he told us just the opposite: "Question: Did you shot at the male that was with her? I just shot at him because I just shot, I mean, you know, I didn't, like, I wasn't out to, like -- I was just shooting and I wanted to get away. I mean, you know, I realized, you know, I shot her, I was scared, I

wanted to -- I wanted to leave. Question: Did you think that he might be her bodyguard? Answer: The only thing pictured in my mind was that that guy was a threat to me. Question: To your safety? Answer: To me getting away. You know, like he was there and he was a big fellow, bigger than me, and I wanted to get away."

What that says, ladies and gentlemen, is a lot not only about why he shot at Pat Sullivan, but about why he shot at Gloria Simonelli. His mind set was that he was going to commit a crime and he was going to get away with it, and nobody would stand in his way. He says specifically that he shot at Patrick Sullivan because Sullivan was perceived as a threat, somebody who could get in his way, and that, ladies and gentlemen, displays the mind set of this man's intent of shooting Gloria Simonelli. He didn't shot her out of lost love, although that would be murder. He shot at her for the same reason he shot at Sullivan, because she was a threat to his ability to live his life in his way, on his terms. He shot at Sullivan so that he could get away with the murder of Gloria Simonelli, and he murdered Gloria

Simonelli so that he could get away with having assaulted her fully six weeks before the incident that gave rise to her death.

If much of what Mr. Highlander said in his statement is a lie, then what is the truth? The truth, I suggest, ladies and gentlemen, was heard from the witnesses who appeared throughout most of last week and the beginning of this week. The truth is that, at least as of the beginning of March, the relationship between John -- I'm sorry, between Gloria and Richard had begun to break down. The truth is that the fear that the young girl's mother saw in her eyes, the fear that was expressed to the mother was great enough that the mother asked Rich to leave, and while there was a faint reconciliation, remember the mother's description of Rick doing all the talking about reconciling and Gloria just sitting there silently?

We also know the relationship had begun to break down as of the beginning of March because of the observations of the victim's supervisor and friend, Ms. Bruni. She saw the fear in Gloria, she saw that whenever Rick would

come around, Gloria would try to shoo him away or try to get him to leave, so at least on the job she wouldn't be bothered by him.

The truth is that there was, in fact, an assault committed upon her in the middle of March, an assault committed by this man against an unarmed woman, an assault that was emotionally distressing enough that everybody who had contact with Gloria for the next two weeks was able to see the emotional distress. Her doctor, her parents, the police, her friends. It was an assault that was serious enough, in her mind, that she ultimately chose to sign complaints against Rick Highlander, first for simple assault then for aggravated assault. It was an assault that was serious enough that the injuries were capable of being photographed, and you will have to take with you into the jury deliberation room photographs that show the bruises to her eyes, photographs that show the cervical collar that was placed around her neck at the hospital, and injuries that include a broken finger that was placed in a cast, and in which cast it still lay on the evening that she died, because Pat Sullivan told

us about it as well.

We know the relationship had broken down because, in addition to all of this action, Gloria took one step more. After she had her father change the locks on the door to keep Highlander away, and after she had the phone number changed to keep him from bothering her, she got a domestic violence restraining order, a piece of paper, a piece of paper from a Judge whose sole purpose was to, in her mind, to protect her from Rick Highlander, and for six weeks it protected her. And you heard her mother describe how Gloria, if she was going to go out for a pack of cigarettes, insisted on having these papers in her possession, feeling that they were like a shield, a legal shield protecting her from the man who had terrorized her and beaten her, a shield that would be found in her pocket on the night that she died at Rick's hands.

The truth is that we know, and Rick knew, that Gloria was serious about all these charges, that, in addition to going to the police, she gave two statements to the police, that, in addition to giving those statements to

the police, she went to the Prosecutor's Office and gave a long statement that ultimately resulted in an indictment, and we know that she got these restraining orders in an effort to protect herself, along with the other devices of changing the locks, changing the phones. So we know she was serious about it. And Rick admits that he knew that she was serious about it, and Rick admits that he was angry over the situation.

Lieutenant Baake, who saw him on the days of his arrest, says as much, that Rick was angry about it, and we also know the truth is that the defendant was concerned about the specter of going jail. He told his friend, Mrs. Abruzzi, that among the things he was concerned about was the fear of going to jail. Brian Abruzzi denied that, but you can assess his credibility, in light of the testimony of Detective Teasenfitz, that, sure enough, Brian Abruzzi was there a year ago as well, and he acknowledged that Rick was afraid of going to jail.

Jennifer Saitz who was a friend of Rick, she had no relation to Gloria. She

obtained admissions from Rick that he was afraid of going to jail as a result of the charges that had been made against him, and she testified to that effect when she appeared in the courtroom.

Robert Brooks, now, Robert Brooks isn't a friend of Gloria's, he testified that he had known, he had known Rick for a full eight years and Rick confided in him that he was afraid of going to jail over these charges. "Question: What did he say, other than he was aware he had been cited for the charges of assaulting Gloria? Answer: Well, he was under a lot of stress because he was obviously afraid he was going to go to jail from it. Question: Did he specifically say that he was afraid of going to jail over that? Answer: Yes."

And there were others that he expressed his fear to. Moishe Shiner, the fellow who owned the grocery store, Rick even told him that he was concerned about his charges, concerned over going to jail. Miss Pond, who had no connection with either party other than she worked at the building where Rick also worked. She heard him express his concerns that the charges were going to land him in jail.

Rick told you that he called his probation officer and his probation officer explained to him that, in a worst case scenario, he could go to jail for violating probation as a result of the charges, and he told Officer Mooney, a fellow police officers with whom he had phone contact once or twice a week for the entire six weeks between the charge and death, and he told him the same thing, that he was upset with Gloria for signing these complaints and that he was upset with the specter of going to jail over these charges.

The truth is that as the defendant became more and more obsessed with fear of jail, he went through an entire checklist of things to try to do to change Gloria's mind. He attended the domestic violence hearing, probably to see if she'll really have the nerve to sit up in a chair in front of a Judge and actually testify against him. Whatever effect that was supposed to have, it didn't work, because she did, in fact, testify. He wrote her letters and she tore them up. He had friends try to contact her, and that didn't work. He went to a lawyer and paid the lawyer money to try to call her

parents to have the parents lien on her to drop the charges, and that didn't work. And all that was left was the decision to kill Gloria, because only in killing Gloria would he escape prosecution for these charges and going to jail, the thing he most dreaded.

He told Robert Brooks that he had decided that he would kill Gloria as a result of these charges that had been placed against him. "Question: Did he talk to you about any steps that he might take in order to prevent him from having to go to jail? Answer: Well, that's when he pretty much said that he thought his out of going to jail was to kill her. I think was just, that was one of his outs, one of his outs is killing her. He was trying to think of ways of not going to jail. Question: And one of the ways was killing her? Answer: Yes. Question: Did he say how that would solve his problem? Answer: She couldn't testify against him. I knew he was serious, he was a serious person. He wasn't a middle-of-the-road type person. In other words, when he's absolute in saying he's going to kill somebody, it's not the type of situation where you would say he's full of crap,

you believe it, he's going to do it." Brooks believed it. He even told the police about it, Detective Mooney verifies that that took place.

The truth is that Rick had decided that he was going to kill Gloria. He bought a gun and he showed it to Mike Reed and he told Mike Reed that he was going to use this gun to kill Gloria. They sit and they watch TV and you'd see The Fugitive, that old television show with Richard Kimble being the fugitive and Richard Highlander saying that's going to be me after I kill Gloria. We felt that maybe it wasn't such a hot idea to leave the gun at Mike Reed's house. He took the gun to another place, he took it to Rufus Duff's house and he left the gun there. But he didn't just leave it there. He also discussed with Rufus the fact that he decided to kill his girlfriend. He wanted to know if Rufus would consider doing it for five thousand dollars, and if Rufus wouldn't, did he have any friends who maybe would bump Gloria off for five thousand dollars. You decide for yourself whether that kind of statement is said in jest or whether maybe there's a kernal of truth in it when, on the very day that you say

it, you're showing Rufus Duff the gun that will be used to kill Gloria and asking Rufus to store it for you.

He told Jennifer Saitz, his friend, that he thought about killing Gloria. He even said that he would shoot her three times, one of which would be to the chest. And certainly by the weekend before the killing, he had decided that this last straw would, in fact, be selected and that he would kill Gloria, and in the apartment, Robert Brooks' apartment where Brooks was and where Reed was and where Richard Stew... was, he told them that he intended to kill Gloria. He told them that he knew she frequented the Greenhouse and he told them he had planned on finding her and on killing her at someplace that she frequented. "Question: Okay, what was he saying while he was laughing kind of sinisterly, to use your word, while he was going through the papers? Answer: He was talking bad about the girl and he said that he was going to kill her. He said she's been hanging out at Ventura's and he said he was going to lay for her. This time he was standing and he was behind Mike Reed, and he just motioned like

this", and the Court says "Indicating with the right arm out and with the right hand. What was he doing with his hand out? He was trying to tell us that he was going to shoot her."

Having made the decision to kill her, all of which is the truth from the witnesses that you have heard from, he then set about the business of executing the plan by hiring Mickey Chambers. Now, the defense has made much of the fact that Mickey Chambers didn't know that he was going to be an accessory to a killing and that what you should glean from that fact is that there was no secret intent in Richard's mind that he was going to kill Gloria Simonelli that way, or that day. It doesn't mean that at all. If you were Mickey Chambers, a casual acquaintance of Rick Highlander, and Rick Highlander came up to you early one morning and said, listen, I want you to drive me around so that I can find this girl I'm going to kill, and when I find her, I'm going to go get a gun and then I'm going to go back, and when she comes out and it's dark out and I think I can get away with it, I'm going to kill her, I want you to drive me to New York; would you do it?

Would you do it for three hundred bucks? Nobody would do that, nobody would do that for three hundred bucks, particularly somebody like Mickey Chambers, who didn't even know Gloria Simonelli, would have no reason to try to hurt her, or even to help him, because they were only casual acquaintances, hadn't seen each other for months. The only way Rick Highlander was going to be able to hire a chauffeur that day was to deceive that chauffeur, to use him, to convince the chauffeur that all he wanted was a ride, and all he was thinking about doing was collecting his belongings to get out of town, and all he wanted to do was to talk to the girl. And he carried it and he pulled it off, you see, because every time Rick would start to get involved in a conversation with Mickey about how he didn't like Gloria and how he was afraid of going to jail over these charges, Mickey would say, hey, man that's your problem, I don't want to hear about it. And so Rick knew to back off, he knew to use Mickey as the ticket out of town, and that's why he didn't tell Mickey that he planned to kill her, because he knew that if he told Mickey, that Mickey would be gone and Rich

would be without a car and without a driver and without a means to escape after the deed that he had decided to do was completed.

Look at the conduct of Rick Highlander on the day that the crime was committed. Look how planned and purposeful that conduct was. Six o'clock in the morning he dragged himself out of a bed, broken ankle and all, so that he can go recruit a professional driver who's not even going to be off from work for another two or three hours. He then meets up with that driver and they go out of their way to .., to cash a check, to pick up a check first, and then to try to cash it to make sure that Rick would have enough money to get out of town that night. They make a stop at Rufus Duff's house to make sure that the gun that Rick had left there for the purpose of killing Gloria was still there and would still be accessible to him. They then scare Moishe Shiner out of his store at lunchtime so that Moishe can drive him to Margate, someplace he didn't want to go that afternoon, to cash the check so that Rick would have the money to get out of town. They then go to a couple of different places trying to get a

rental car so that the car would be available to take him out of town, and to make sure Mickey Chambers didn't talk, he gets Mickey Chambers to unwittingly take himself out of the picture by having Mickey put down the cash that Rick put up for the car and having Mickey use his credentials to get the car rented. He then makes sure that Mickey doesn't go to sleep on him and go home by promising him and taking him to buy clothes and taking him to a motel and getting him dinner. He then has Mickey drive all over Margate looking to the places that Gloria frequents in an effort to find her.

He then finds the car in the parking lot of the Greenhouse, a parking lot that you can't see from the main street, so he had to have had Mickey go down the side street and into the lot in order to see the car. He notices that it's still light out, and so he has Mickey take him back to Atlantic City to kill a few hours until it would be dark, and then before returning, he makes that stop again at Rufus' house to pick up the gun immediately before having Mickey drive directly back to Margate, stopping first at Gloria's house to see

whether maybe she left the bar early and gone home, because then he'd have to kill her there, and then after he has Mickey drive through the parking lot, and after he shoots her and shoots the guy, or shoots at the guy who was with her, he gets in the car and drives up to New York, gets on a bus and heads points south in an effort to escape arrest and detention, to escape prosecution, in an effort to get out of the country, and but for the fact that he ran out of money in South Carolina, he probably would be gone. Just looking at that conduct alone, you have to conclude that when Rick Highlander got up that morning, he knew that he was going to kill Gloria Simonelli, and the only thing left to chance was at what spot he would find her and at what point he would decide it was time to take her life, and I suggest that you can believe that sequence of events from Mickey Chambers, that everything he said is true, because everything he said was corroberated by other witnesses.

Mickey said that Rick came to find him that morning, and Rick admits as much in his statements. Mickey says that the first stop

they made was at a condominium where Rick tried to borrow money, and Jennifer Saitz came in and said, sure enough, Rick was there that morning trying to borrow money and there was a black guy who was with Rick at the time. Rick said that they went to Rufus' house, and the conversation was about whether the gun was still there, and Rufus, who doesn't know Mickey to the point that he didn't even remember Mickey's name, Rufus Duff corroborates, sure enough, Rick was there with Mickey and he was asking about the gun. Mickey says taht they then drove back to pick up the check from the Atlantic Palace, I think it is, wherever the job had been done, and sure enough, the check got picked up, because Rufus got paid out of it. Mickey says they then went to this little delicatessen in Ventnor to try to get the check cashed, and sure enough, Moishe Shiner came in and verified that that occurred, and that there were at least two black guys in the car that were waiting for Highlander, they being Mickey Chambers and Rufus Duff. Mickey says they then went to Ruffu Ford to rent a car, sure enough Lynette Boyle come in and shows you that a car was rented that day, that enough

deposit was left on the car that it could have been taken out of state, could have gone up to New York and that the credentials used were those of Mickey Chambers. Mickey Chambers said that they then went to the Pier Six and took a shower and changed and checked in there for awhile and that Rick is the one who signed it in. And sure enough, the girl comes in here from the Pier Six and has the receipt and shows that they checked in that afternoon, that it was a white guy who signed in, that he used the name Rick Simonelli, and that there was a black guy with him at the time that they signed in. Mickey Chambers said that they went around Margate looking for her car and that they found it, and Rick admits that that's the case. Mickey Chambers said that they then went into Atlantic City, had a few drinks, a few drugs, that they then stopped at Rufus Duff's house to pick up the gun, and sure enough, Rufus said that that happened.

Every stop along the way corroborates what Mickey Chambers had to say, and so you can be sure that he was telling you the truth. That conduct by the defendant that

day, would, in and of itself, be enough to convince you that the killing was on purpose, but when you take that conduct that day and you add to it the statements made by Rick Highlander that he intended to kill her, statements made to friends, and when you add to it his articulated motive of why he wanted to kill her, statements about wanting to avoid going to jail, you had to come away with the conclusion that this was a purposeful, planned, premeditated murder, it was not a knee jerk emotional irrational reaction to any provocation on the 25th of April other than Glo[illegible] walking out of a bar in broad -- in an open parking lot to take a fellow down the street home.

We also know that Rick intended to kill Gloria, because he admitted as much to his friends on the phone. He admitted as much to Judy Bryars. Well, he said that there was charges pending, you know, and she had information and was going to testify against him, and he had tried real hard with attorneys to get her messages, to write her letters, things to get her not to do it. "Question: Did he tell you what he had tried to do to get her

not to testify? Answer: Well, what do you mean." And later, "Yeah, to try to convince Gloria not to give her evidence against him. The phone was changed to an unlisted number. He tried writing letters, he got no response. He tried to get people to talk to her, he got attorneys to talk to her and she wouldn't change her mind. Did he tell you why he killed Gloria? Answer: Because she was going to turn evidence against him and he will go to prison for fifteen years. Was he the one who brought up the suggestion of going to prison? Yes, sir. What did he say about that? He didn't want -- he wasn't going to jail. Just that way, I'm not going to jail? Yeah, yes."

He told his friend the same thing, and he told the police the same thing. He told the people who interviewed him from the F.B.I. that he knew what he did when he did it, that it was premeditated, that he planned to kill Gloria for at least a week before he actually took her life and that he secured a gun for that purpose. To be sure, the words in the confession that Rick signed were the words written down by the F.B.I. officer, but the reason I asked the

F.B.I. officer to have his notes in front of him was so that he could read to you from his notes the exact same ideas that came from Rick's mouth that ultimately appear on the confession that Rick voluntarily signed, words that include, "I knew what I did when I did it. If I have to pay the price, I will." Words like "I knew when I did it. If I had it to do over again, I would unload the fucking pistol on her and the guy too." Words like, "I meant to do what I fucking did" immediately on the heels of discussing the .357 magnum that he had acquired. Words like, "I knew I was going to kill that mother fucker." It was premeditated, and that he had planned to kill her for up to a week before he saw her at the Greenhouse, and words like "I aimed to kill that mother fucker. I shot her again because she opened her mouth, so I thought I missed her." And he added, "I meant to do what I did. I'm not sorry I did it. I did what I felt I had to do."

How more can he be clear in indicating, through the mouths of these police officers, that he did exactly what he planned to do, that he hated her, that he was afraid of

going to jail over her, that he was not going to permit her to ruin his life, that he told people he was going to kill her, that he hired somebody to drive him to the scene and take him away, and that he got a gun for that purpose, and that there was nothing at all spontaneous about the killing, that it was conscious, that it was planned, that it was, in his words, premeditated.

The next item that the defense urges is intoxication. He suggests to you that because he took drugs on the day that Gloria died, and because he drank on the day that Gloria died, that somehow that voluntary introduction of drugs and alcohol in his system reduces his level of responsibility for murder to manslaughter. What you will hear in the Judge's charge is that the fact that you get drunk, or the fact that you get high does not necessarily mean that you're not guilty of knowing or purposeful conduct. Intoxication, before it can reduce murder to manslaughter, requires that you have some doubt by virtue of this intoxication, that his faculties were so prostrate were so reduced by the level of drugs

and alcohol that he was that incapable of knowing what he was doing, incapable of acting purposely or knowlingly.

Now, clearly there was evidence of the ingestion of drugs and alcohol that day. Rick said that he had it, and Mickey Chambers said that the two of them had it together. But the alcohol consumption was spread throughout the day, and if you look at the deliberate way in which Highlander conducted himself that day, and you look at all of the details that he was able to remember about that day, there is no way you can conclude that he was so far gone on drugs and alcohol that he was incapable of knowing what he was doing, that he was incapable of acting purposely. He had a plan that began early that morning and culminated with his flight up to New York, and throughout the entire day, Mickey Chambers was able to understand everything he said, throughout the entire day, Highlander was conscious of where he was, he was conscious enough to get the paycheck, to get it cashed, to pick up the rental car, to go look for Gloria at the spots he knew she frequented, to go back and get the gun after having checked

on it earlier in the morning, to make sure the gun was loaded, and even with his busted ankle, he was able to coordinate getting out of a moving car with a gun at his side, walk up to Gloria, shoot her once, and was aware enough to know that if when she went down she was still talking he's got to shoot her again to make sure she's dead, and he was aware enough to know that there was a fellow with her that was a threat to him, and that you better at least make an effort to shoot him as well so that you don't have a witness, and he was aware enough to get back, and coordinated enough to get back in a moving car with his busted ankle and to crouch down on the floor under the dashboard so he wouldn't be seen and give Mickey directions to get him up to New York to get to the Port Authority to get on a bus to get out of town.

Ladies and gentlemen, I suggest to you that he may have been high, and Mickey explained to you that when you take cocaine, it actually revives you, he may have been high, but there is no way you can conclude that he was so far gone that he didn't know what he was doing. His mind, I suggest to you, was perfectly clear.

It was his soul that had gone mad. It was his soul that was intoxicated, not with drugs or alcohol, but with rage that this girl would have the temerity to resist him, that this girl would have the nerve to stand in his life's way and try to put him in jail for something that he felt was just a minor slap across the eye, and so I suggest to you that intoxication is not there, just as heat of passion provocation is not there.

What you are left with is a man who made a conscious and purposeful decision to kill. He told people in advance that he was going to do it. He admitted after the fact that he had done it and that he meant to do what he did. He devised a plan on the 25th of April and he executed it just about perfectly. That is the essence of purposeful murder, a murder committed by his own hand and conduct, and a murder committed clearly with a purpose to kill, not just to cause serious bodily injury resulting in death. Nothing could be clearer about his purpose than the fact that when she went down, he stood over her, as Tanya Martin told you, and pointed the gun down at her chest

and pulled the trigger, aiming at her chest, using a weapon that is known to be capable of lethal use, a hollow point bullet intended to not simply go through and come out the other side, intended to mushroom in her chest, to completely destroyed her heart and remove any chance of her reviving or living through the incident of being shot. Sure, there were intoxicants that day, but all that demonstrates is the level of Mr. Highlander's character, that he needs to drink to get the courage to commit the cowardly act of gunning down an unarmed woman in the parking lot of a bar.

The other serious charge in the indictment, which I will try not to spend much time on, probably spent too much time already, is the charge that there was an attempt to kill Patrick Sullivan. We know that a shoot was fired at Patrick Sullivan, and we know it because Rick Highlander says so. Rick Highlander told us, in all of his statements, it's one thing that's consistent, he told us that after he shot Gloria that he saw Patrick Sullivan there, he perceived him as a threat and he took a shot at Patrick Sullivan, and indeed,

when he talked to Judy Bryars, he didn't even know whether Patrick Sullivan had been hit. He wasn't sure until he talked to Lieutenant Welsh at the airport, and he asked Lieutenant Welsh about Sullivan, and Sullivan said no, he didn't get hit, and Highlander responds, "That just proves that there is a God, he didn't deserve to die." The inference being, yeah, I shot him and that Gloria did deserve to die.

And there is nothing inconsistent about the physical evidence with the theory that Rick articulates, that two shoots were fired at Gloria and the third was the one that was fired at Patrick Sullivan. Doctor Jason had access to and made use of Gloria Simonelli's coat in explaining to you how he concluded that she was shot twice. The first shot went through her sleeve and through her shoulder without grazing the skin. There were no marks on her skin, so he knew she had not been hit. And the entrance and exit wound configuration on the arm is such that the arm had to be raised for the bullet to go through this way and then go through the shoulder. That was shot number one. That's what caused her to fall down.

He used the jacket as well for shot number two, and he demonstrated, not only with the jacket but with the autopsy photograph that you will have for your deliberations, that there was an entrance wound in the arm, and as the arm had been placed over her face to shield herself from Richard Highlander, that the bullet tore through her arm, and that that same bullet entered her chest, and that that is what caused her death, and that was bullet number two. Bullet number three was the one that hit the blacktop where Rick -- where Pat Sullivan lay and exploded, leaving fragments all over the canopy in front of which he lay, and it's the culmination of those fragments that is bullet number three. That was the one intended to kill Pat Sullivan for preventing, or in an effort to prevent him from getting in Rick Highlander's way.

I suggest to you, ladies and gentlemen, that Rick Highlander is the kind of person that I described in the opening statement, seems like ages ago, that he was the kind of person who felt that he had a right to control things, that he had a right to possess

and control even other people's lives, that he would not abide his life being interfered with by a former girlfriend, and that when she threw him out after the assault, and when she got the restraining order against him and signed criminal charges against him, and when he perceived that his life would be interfered with by him having to go to jail, he took a series of steps which ultimately led to the decision that the only way out was to kill Gloria, that no family court restraining order, that no family court judge, that no former girlfriend was going to interfere with his life by putting him in jail. She made the decision to draw the line. She was not permitted to follow through. Rick took her life to make sure of it. In her name, I ask you to draw that line, to find that this defendant is guilty of a knowing, purposeful murder of her, to prevent her from testifying against him, and that he is equally guilty of attempting to kill Pat Sullivan for having committed the same crime as Gloria, for having the temerity to be there, to possibly interfere with his life and his desire to avoid consequences and to avoid jail. Thank you.

THE COURT: Thank you, Mr. Talasnik. Ladies and gentlemen, we will, at this time, recess for lunch. I'll ask you to be back by two o'clock. I'd like to be able to start promptly at two this afternoon. I'll give you a better sense of our schedule for this afternoon a little later. It is imperative during your luncheon recess that you remember my instruction. You've heard now almost everything that you're going to hear. You need only to hear from me as to the applicable law, but it is nevertheless quite important that until you get into the jury room and start your deliberations, after my remarks, that you not have any discussions about this case among yourselves and certainly, of course, with anybody else. We'll see you back by two o'clock. Thank you.

(The following is heard out of the presence of the jury at 1:00).

THE COURT: Gentlemen, just very briefly. Page twelve is at the point where I will move to question 2-A, the aggravated manslaughter. The plan that you have says question 2-A is called aggravated manslaughter and it alleges so and so. I propose to add an

additional sentence there, so that the beginning of that paragraph reads as follows. Question 2-A is called aggravated manslaughter. This is a different kind of manslaughter from the passion provocation type of manslaughter. It alleges that the defendant, et cetera. Other than that, we will proceed.

MR. PRESTON: Is the verdict sheet labeled aggravated manslaughter?

THE COURT: Yes, I think so.

MR. PRESTON: That was the specific objection that I raised.

THE COURT: No.

MR. PRESTON: I propose it is not -- the verdict sheet is not labeled aggravated manslaughter or otherwise.

THE COURT: Question 2-A doesn't have a title, nor does 2-B.

MR. PRESTON: I don't think that's advisable that we inform the jury as to the -- as to degree or anything. I thought that what we had discussed was that the elements of the offense was important, and I think that that's a problem, if we're going to be consistent with our previous discussions.

THE COURT: No, I agree with you that the focus is, and should be, on the elements, but each of the charges in the indictment and in the verdict sheet has a name, and in all other cases we have given them names, and I felt it was appropriate to name the charges. All I'm doing is differentiating the type of manslaughter.

MR. PRESTON: I don't think that there is an aggravated manslaughter count in the indictment.

THE COURT: It's in the included offense.

MR. PRESTON: And doesn't appear anywhere on the verdict sheet, and therefore, I don't know that we need to label it over here where it's not referred to or labeled anyplace else.

THE COURT: I understand.

MR. PRESTON: I do have one difficulty with prosecutor's summation, Judge.

THE COURT: Mr. Davis.

MR. DAVIS: He's speaking, Judge, for both of us.

MR. PRESTON: We had had a motion

with regard to both the guilt phase, the penalty phase with respect to the reference of the testimony about an execution style killing. That execution style killing, there was a motion in limine made and ordered that it not be brought out. I think the Court recognized the prejudice of referring to this as an execution. The Court issued that order. At one point it came out. Anyway, I believe the Court's comment was that its coming out was inexcusable, in light of the order that the Court had issued, and yet, the prosecutor, not once, but on two occasions, referred to this as an execution.

THE COURT: Mr. Preston, I might have missed it. I heard the word execution but in the context of executing a plan. I don't want to get into whether I think it might have been a very sophisticated effort to get the word in, but I did not hear a specific reference to execution as a description of the shooting. He may have said it, and you may be right.

MR. PRESTON: I think the Court may be advised to review the transcript, and I believe that it was very clear.

THE COURT: The transcript will

speak for itself. You may be right.

MR. PRESTON: And I think that it was very clear that it was the killing that was referred to as an execution, and referred to that way on two occasions in his summation with greater emphasis, with great passion, as Mr. Talasnik did deliver his summation.

THE COURT: Assuming that it was what is it.

MR. PRESTON: And my application is that in light of our -- all of our attempts previously to exclude this, in light of the know prejudice and the recognized prejudice, we move for mistrial.

THE COURT: The application for mistrial will be denied. As I've indicated, Mr. Preston's recollection may be perfectly accurate. If it was, it escapes my attention. And I am not satisfied, in the context it would be with the overall evidence in the case and the context of the summation, that it would be improper at this stage, in any event. If you wish, and I'm not going to do it without a specific application, if you wish me to address any particular cautionary instruction to the

jury in my charge, I will consider that. You may have the lunch hour to consider it. I'm not going to do it without a specific request to do so.

MR. PRESTON: Judge, I can state right now clearly that it's the type of thing that can't be cured. This discussion was had before. The behavior repetitive. I believe that it was inexcusable, as the Court had characterized the previous incident, and at this particular stage in the proceedings, any instruction will only aggravate a situation which is beyond repair right now.

THE COURT: Well, I'm not inclined to give any instruction, Mr. Preston, I indicated that. Okay. We will recess. Please be here promptly by two.

(Whereupon the Court takes a luncheon recess at 1:05 p.m.)

(Afternoon session is contained in Volume II, taken by Gerald W. Abarno, CSR.)

C E R T I F I C A T E

I, KATHY E. DURAND, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC IN THE STATE OF NEW JERSEY DO CERTIFY THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN BY ME IN THE ABOVE CAPTIONED MATTER.

Kathy E Durand

KATHY E. DURAND, CSR, CM
OFFICIAL COURT REPORTER
LICENSE NO. XI00868

DATE: 10-1-89

A-54-89T4

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

RECD
APPELLATE DIVISION
JUL 11 1990
Clerk

STATE OF NEW JERSEY,

COMPLAINANT,

VS. : TRANSCRIPT OF TRIAL

RICHARD LEE HIGHLANDER,

DEFENDANT.

FILED
APPELLATE DIVISION
JUL 11 1990

AT: ATLANTIC COUNTY COURTHOUSE
ATLANTIC CITY, NEW JERSEY
ON: THURSDAY, JUNE 22, 1989

B E F O R E:

THE HONORABLE STEVEN P. PERSKIE, JSC

ORDERED BY:

JAMES JUKES, DEPUTY PUBLIC DEFENDER

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

MURRAY TALASNIK, ESQUIRE
ASSISTANT PROSECUTOR, ATLANTIC COUNTY
ATTORNEY FOR STATE OF NEW JERSEY

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(The following is heard in open court at 1:50 out of the presence of the jury).

THE COURT: All right, gentlemen, first let me place on the record some facts. I had this morning a conference in chambers with Mr. Preston and Mr. Talasnik, at which time Mr. Preston outlined for me some of the things that he's going to spread on the record here now with respect to the substance of our upcoming process. As a result of that discussion and the requests made by counsel, I have agreed to adjourn the proceedings that were scheduled for tomorrow. At my request, the Sheriff's Office called each of the sixteen members of the jury panel and directed them not to report tomorrow, but rather to report Monday morning, and by the way, that's at 10:30. I'll request that you gentlemen be here at 10:15 so that we can make sure that we have a sense of what's happening. In any event, we will commence the substantive part of the next phase of the trial on Monday morning.

What I would like to accomplish this afternoon can be done quickly, and in

general, falls into the following categories. I would like to have Mr. Talasnik make a proffer for the record as to what evidence he intends to adduce in the penalty phase, or as to what evidence he intends to refer to the jury's direction for consideration in support of the two aggravating factors that have been cited. I'd like to have Mr. Preston, to whose attention earlier today I directed the provisions of 3:13-4b, present, for the record, the mitigating factors upon which the defense will rely and a proffer of, in general, the discovery and the nature of the proofs, at least as to that expert testimony and the like. I'd like to discuss what we can about schedule, then I'd like to review the proposal that I gave you sometime ago with respect to my opening remarks to the jury that would be delivered on Monday morning, and lastly -- well let me do this first and I'll get it out of the way at this point. I have, Mr. Talasnik, I don't know that I've discussed it with you, but with Mr. Preston and Mr. Davis, I have mentioned my review of the Zola decision, particularly that part of the decision that is at page 430, and I have presented to them as I

do now to you, a document that I've asked Mr. Preston, at the appropriate time, to review with the defendant. It's my reading of the Zola decision that, and my determination that the process involved there of elocution requires certain procedural and substantive guidelines by the Court. I have presented a written document emboding the procedural and substantive guidelines which Mr. Preston, at the appropriate time, after you've had the opportunity to review it with the defendant, you and I and he will discuss it. Is there anything else that either of you needs or that needs to be on our agenda this afternoon?

MR. TALASNIK: I have nothing, thank you, Your Honor.

MR. PRESTON: Nothing, Judge. The only question I have as to how much Rule 3:14 is going to require me, but we can get to that as we go along.

THE COURT: Let's leave that until we have a problem. All right. Let me first get my handy dandy notebook out here. Today is the -- I've completely lost touch. I don't know what day of the week it is.

SHERIFF: Thursday, the 22nd.

THE COURT: All right. Mr. Talasnik, the State's proffer with respect to aggravating factors.

MR. TALASNIK: Your Honor, notice of aggravating factors was served on defendant and defense counsel on the 20th of June 1988, and it lists two specific aggravating factors. At the time of the penalty phase of these proceedings, the State does not intend to introduce any additional witnesses, testimony, physical or documentary evidence. The State will ask, pursuant to the statute, that certain portions of certain witness's testimony be considered for purposes of the penalty phase, and then we'll also ask that certain pieces of physical and documentary evidence that were otherwise admitted in the guilt phase be considered for purposes of the penalty phase.

The proffer would include that portion of the testimony of John and Gloria Simonelli which referred to the existence of the relationship between the deceased and the defendant, the -- their knowledge of the assault incident that occurred on the 16th of

March which lead to the signing of, first, a simple assault complaint, and thereafter, an aggravated assault complaint, and the pursuing of remedies under the Domestic Violence Act, their knowledge of her having given statements to the police in support of those complaints, of her appearance and testimony at the domestic violence hearing on the 31st of March in the presence of the defendant, and their conversations with her regarding her willingness and resolve to pursue these criminal charges.

The the State will proffer to the jury so much of the testimony of Jean Henderson, or Jean Bruni, using her maiden name, with respect to her contacts with the victim and the parents to learn of the assault and a description of the victim's then condition, her conversations with the victim when the victim returned to work regarding the victim's willingness and resolve to pursue the charges, and her corroboration of the presence of Pat Sullivan with the victim at the Greenhouse Bar on the evening of the shooting.

State will refer the jury to that portion of Investigator Craig Rummler's

testimony which includes the taking of a statement from the victim with respect to the assault, that statement having been taken on the 30th of March, the presentment of that statement to the Grand Jury, their return of an indictment charging aggravated assault on the 6th of April, and the fact of the indictment and the inclusion of her statement in the discovery that was otherwise forwarded to defendant and defense counsel.

The State would proffer so much of the testimony of Diane Pond as would indicate a conversation with the defendant in early April of 1988 regarding his concern over going to jail as a result of charges made by Gloria, and so much of her testimony as related to a conversation with the defendant on the 20th of April regarding his intention to go to a lawyer that day to try to get the lawyer to contact the victim's parents about withdrawing the charges.

The State will proffer so much of the testimony of Jennifer Saitz as includes taking the defendant to a lawyer on the 20th, her observations as to his demeanor upon leaving the lawyer's office and her conversations with

him thereafter regarding his fears of going to jail over the charges brought by the victim, his discussion of the possibility of killing her, of shooting her with a gun, and her conversation with him about the occasion where he waited for her outside of her work with a .358 handgun.

State would proffer so much of the testimony of Robert Brooks as would include conversations that he had with the defendant regarding defendant's concern over going to jail as a result of the charges brought by the victim. Also the fact that he took, that is to say, Mr. Brooks took the defendant around in his car on various occasions checking on the victim, principally at her place of employment. Such further testimony as included conversations with the defendant regarding his increased level of distress upon receipt of the indictment, his discussion of a desire to kill the victim to prevent her from putting him in jail, and discussions with him on the 24th of April regarding a decision to kill the victim over the charges, and finally, the discussion with him over the phone after the defendant's return to New Jersey where there was an admission that, as

part of the shooting incident, a shot was fired at the direction of Mr. Sullivan.

So much of the testimony of Michael Reed would be offered as includes conversations with the defendant regarding the defendant's concern over going to jail over the victim's charges, conversation including defendant's indication that he would kill her to keep her from testifying, an indication that a handgun was acquired, and that it was acquired for the purpose of killing her, his recollection of the incidents at the Brooks' apartment on the 24th of April regarding the same kinds of conversations, and the post arrest conversation with Mr. Highlander over the phone where, again, there was an indication, as part of the incident resulting in Gloria's death, a shot was fired at her companion, Mr. Sullivan.

State would proffer so much of the testimony of Detective Mooney that included phone conversations with the defendant where he expressed his concern over the charges brought by the victim, his concern over the charges being upgraded and his insistence that he would not go to jail.

So much of the testimony of Mickey Chambers would be offered as would indicate his observation that when the woman emerged from the bar that there was a man with her, his observations that the defendant got out of the car, and simultaneously removed a handgun as he did, his observations that the defendant approached the direct -- in the direction of the two of them, that he heard three shots, and so much of the conversation thereafter that included a reference by the defendant to him having shot at the male as well as the woman, and the fact that the car was observed before the decision was made to pick up the gun from Rufus Duff's residence.

State would proffer so much of the testimony as Moishe Shiner that included conversations with the defendant where he indicated an intent to kill the victim if she didn't drop the charges in concerns over going to jail.

So much of the testimony of Rufus Duff as included conversations with the defendant regarding problems that he had with the victim and the charges brought and concerns

over going to jail, and also including storing the weapon there, checking on it on the morning of Gloria's death and picking it up sometime after dark.

So much of the testimony of Terry McCabe as included conversations with the victim regarding her willingness to pursue the charges and which includes indications that Mr. Sullivan was with the victim on the night of the killing at the time that Miss McCabe herself left the bar.

So much of the testimony of Pat Sullivan -- Sullivan would be offered as would indicate his presence at the bar with the victim, that he left the bar with the victim, his relative proximity to the victim as he saw the defendant approach, point a gun at them, and his recollection of three shots being fired.

So much of the testimony of Tanya Martin would be referred to as indicates that she observed the defendant approach the victim and Mr. Sullivan, that the two of them were together, that she heard three shots and that the victim and Mr. Sullivan were both on the ground in the approximate location together.

So much of the testimony of Doctor Jason, Officer Harbison and Officer Hannigan would be offered in support of the theory that of the three shots fired, two of them were fired at and struck the victim, the third one struck the ground in the area of Mr. Sullivan and exploded, causing lead fragments to be in the overhang, or the entrance to the overhang behind where Mr. Sullivan lay.

So much of the testimony of Judy Bryars would be proffered as would include her conversations with the defendant as to why he killed the victim and as to the fact that he shot at the male companion at the same time the shot -- or the shooting of Gloria Simonelli took place.

And also so much of the testimony of Lieutenant Welsh, Investigator Juliano and Agents Davis and Clemens that include conversations with the defendant as to why he killed Gloria Simonelli, as to the fact of shooting at the male companion and as to the reason for shooting at the male companion. That would complete the proffer as to testimonial evidence.

With respect to physical evidence, addressing just those items that were marked into evidence as part of the guilt phase, the State will seek to have admitted the following pieces of physical evidence. S-5, which was the three page document of the defendants -- or of the written statement signed by the defendant; S-13, which is the brown leather jacket; S-16 through twenty-six, which are the scene photographs; S-33, which is the one autopsy photograph showing the placement of the probe to correspond with the shot that killed Gloria Simonelli; S-36, certified copy of the domestic violence complaint; S-37, certified copy of the indictment charging aggravated assault; S-38, the envelope containing the bullets and lead fragments; S-41, copy of the domestic violence complaint possessed by the victim at the time of her death; S-44, the original of the aggravated assault complaint signed by the victim, and that's it as --

MR. PRESTON: What was the last one?

THE COURT: Forty-four.

MR. PRESTON: Forty-four.

THE COURT: That's the March 16 copy of the summons 900015 alleging an assault. Okay, Mr. Preston, you desire to be heard with respect to any of that?

MR. PRESTON: Absolutely, Judge. Eighty percent of it, I believe, is totally and ourtrageously objectionable under State vs. Kadadish. What we have here is an attempt to retry the case to prove as an aggravating factor that the fact that the -- the murder occurred in the first place, something that the cases specifically forbid, and there is so much material here that this brings out a point which I don't think has been addressed in any of the cases but I think is extremely important now. While the case is being tried, there is some unwarranted assumption that somehow the interests of the penalty phase and the interests of the guilt phase were so one that any objection that could have been made for penalty phase material to this stuff coming in was, in fact, made by Mr. Davis, and I don't believe that that assumption is warranted. The problem that I have here is that --

THE COURT: Wait, wait, wait,

before you leave that thought, could you -- you lost me. I thought you had asked me at the beginning of the trial, and that I had granted the motion that you might want to be heard during the first phase of the trial with respect to anything that was arguably relevant or admissible in the first phase but that might be objectionable with respect to the second phase. Didn't ask you me that?

MR. PRESTON: I asked you that, Judge, in respect to -- and the condition that I proffered to the Court was there may arise a circumstance in which something would be objectionable in the penalty phase, and its objectionableness might be so gross as to the jury having heard it at all, at all, that it might tip the balance as to its admissibility in the guilt phase at all, that particular, very limited circumstance. Obviously, in making that judgment to you, I was also required to say, is there a reason, and is it admissible in the guilt phase at all, and is it just something that should come in in the guilt phase and not be referred to at all in the penalty phase. What I'm talking here is not about the fact that

the jurors heard it in the guilt phase at all. What I am talking about is the fact that it's going to be re-introduced into the penalty phase, and at this point, I take the opportunity, and this is what I begun to say, that each of the things which have been described so briefly and so succinctly by Mr. Talasnik contains many lines of testimony which, in the course of an ordinary presentation, I would have the opportunity to hear the question, hear the answer, make the objection as to the line of testimony, as to the specific question. That procedure has been so abbreviated and so truncated by the position of the State that I find myself in the position I'm at now.

Now, what I can say to the Court right now is a number of general objections. I believe that I should have the right, and since we have the transcripts available, to read them as to what Mr. Talasnik is referring to, and to be able to make the objections that I think are appropriate. Right now, off the top of my head, without recalling every detail of every word that was said, I can say that with regard to some of these proffers that the prosecutor's

making, the material that he wishes to introduce with respect to the Simonellis is, at least, Rule 4 material. What they are saying is so cumulative of everything else that's in the case with regard to the aggravating factors alone, that's the only thing we're dealing with, we're not re-trying this whole case with regard to the aggravating factors alone, that their introduction of all those other things that get tangled up with their statements, that consists of the most beautiful victim impact statement that I have seen. She was a very loving girl, she was this, she was that. We are not here to discuss that Gloria Simonelli was a great person. But all of that other stuff that gets dragged in through the Simonelli's testimony, even phrasing it the way Mr. Talasnik did, it's so intertwined that I don't think that there is any way it can be separated, and their testimony is cumulative as to the issues that he addressed. Especially cumulative in the fact that Jean Henderson testified to the same thing. The problem that we had in the penalty phase was that a lot of hearsay came in with respect to statements made by the victim. Your

Honor ruled as to fresh complaint, Your Honor ruled as to a lot of things which were relevant to guilt issues. They are not relevant to penalty phase issues. There is no hearsay exception with them as to penalty phase issues. There -- those specific things that she said, I don't believe that there is any exception to the hearsay rule, that the fact that he's trying to prove, go beyond the mere existence of the complaint. It was -- specific example. It was inadmissible in the -- in the guilt phase to have the handwritten complaint that Gloria Simonelli signed against Highlander submitted to the jury, but that's what he wants to submit now. He just read that off as one of the things. I don't think --

THE COURT: Are you referring --

MR. PRESTON: Craig Rummler, the statement of the victim with reference to the assault.

THE COURT: You want -- you referring to the content or the fact of that statement?

MR. TALASNIK: The fact of it having been made, just as was testified by Mr.

Rummler here.

MR. PRESTON: What I'm saying, Judge, this is a perfect example.

THE COURT: Rummler, he referred to Rummler's testimony. Rummler did not testify as to the contents of any statement.

MR. PRESTON: This is --

THE COURT: I wouldn't let him.

MR. PRESTON: This is a perfect example of the type of haziness that exists. The material -- there were a number of things that were discussed about criminal activity on the parts of the defendant. His obtaining of the handgun, when he obtained it, Jean Saitz -- Jennifer Saitz, there was a reference to the occasion that the defendant had to have a handgun in his possession. I don't remember the prosecutor's exact words. If you recall, State vs. Kadadish, that evidence -- there was evidence as to criminal activity on the part of the defendant that came in, and the Supreme Court was very careful to say that that criminal activity could only come in, not with respect to an aggravating factor, but only with respect to its particular relevance in rebutting a

mitigating factor. The prosecutor is introducing all of the descriptions about the handgun, all of the descriptions about all of this stuff to go to premeditation. The jury has already decided those issues. They've already decided the issue of heat of passion, already decided purposeful and knowing. They are not here to retry the guilt phase. The issues that the prosecutor should be limited to are the materials that go to the aggravating factors, was there a grave risk to Patrick Sullivan.

Now, some of the stuff is clearly admissible, no question about that. That he was -- his presence there, no question about that statement that a shot was directed in his direction. Clearly admissible. No problems with that. But to retry the whole penalty phase as to premeditation --

THE COURT: I understand, I understand, I understand that point.

MR. PRESTON: It's all just beyond me.

THE COURT: Go to your next point.

MR. PRESTON: I think you're right about that, all his statements that he referred

to, there were two kinds. The statements that referred to he was going to kill her because he was going to jail, no problem. But the idea -- the statement that he was going to kill her alone, the premeditation aspect falls into the same category. I believe there's a clear decision there as to what can come in and what can't. The -- I think that the -- the existence of aggravating -- with respect to the aggravating factor of the murder being committed for the purpose of escaping detection, trial, et cetera, the fact --

THE COURT: The language we're going to use, so we can all be consistent, is to escape trail or punishment.

MR. PRESTON: Or punishment, the existence of the charge is admissible, no problem with that. Evidence that goes to the defendant's awareness of the charge is admissible, but the fact that the prosecutor was conveniently able to hold up the shield of that restraining order, or the shield of those charges, or whatever, to the jury in the guilt phase, to carry that -- those types of things over into the penalty phase is outrageous. The

existence of the indictment is sufficient. The existence of the complaint and the factor of upgrade doesn't do anything in terms of his avoiding going to jail. His avoiding going to jail goes to the elements of the fact that it was indictment. The upgrade does nothing except to go to the emotional quality --

THE COURT: What about the extent, and generally I follow your argument, and in general, I think it makes sense. I'm going to hear Mr. Talasnik in a minute. Aren't you leaving out one fact to the complaint or testimony or upgrade or the statements in that respect, do they not go to what the jury may infer he knew about her state of mind in terms of her intention to pursue the charges. Isn't that relevant?

MR. PRESTON: I'm trying to explore the possibility that Your Honor may be right, and I'm having difficulty doing it. I'm having difficulty.

THE COURT: We'll leave that question you answered for the moment. I'm going to hear from Mr. Talasnik in a minute in response, then you can think about it. What are

your other points?

MR. PRESTON: The observation of the car in terms of Chambers, and that they went back and got the gun after they saw the car first, that all goes to premeditation to -- the jury has concluded that Gloria Simonelli was murdered. It has also found as a fact that a shot was fired at Patrick Sullivan. The prosecutor has no reason to retry that issue by going in with the autopsy photos, which clearly would be very nice to -- we were worried about the jury becoming incensed with them in the first place, and now we're going to throw them in the penalty phase, autopsy photos, they have no reason to re-decide that issue. He doesn't have to prove that a shot was -- that there were two shots fired at Gloria and there was one shot fired at Patrick Sullivan. The jury's decided that. We start with that as a fact. He doesn't have to re-proffer it. So the autopsy photos, the jacket, all of that evidence would, can be physical evidence which stands to evoke emotion from the jury. I think it's certainly objectionable under Rule 4. I even doubt and have serious reservations that we are -- that we

need to discuss or bring forth to the jury as evidence here the statements of Mr. Highlander, that he did intend to shoot at Patrick Sullivan. The jury concluded that he did on the verdict sheet, that he did fire a shot at Patrick Sullivan.

THE COURT: Okay, to that I would address your attention to the part of the charge which you can see, in the trial, I've given you. The jury has to conclude here for aggravating factor not only that he created a grave risk of death to Sullivan, but that he did so purposely and knowingly.

MR. PRESTON: And what was the mental state in the verdict that they brought back.

THE COURT: The verdict that they brought back was an attempt to cause bodily injury. That is a different legal question than a purposeful attempt to create a grave risk of death, is it not?

MR. PRESTON: I don't think so, Judge.

THE COURT: Okay.

MR. PRESTON: I think that's --

THE COURT: That's something --

MR. PRESTON: It's something that has to be -- I have extreme reservations about that.

THE COURT: What else do you have?

MR. PRESTON: All of the testimony in terms of the penalty -- in terms of the aggravating factors that relate to the relationship -- no, withdraw that. I'm having a little difficulty reading my quick notes here. I just want to make sure that I'm recalling what the prosecutor said. The autopsy testimony, besides the photos, Doctor Jason, and there was something on Judy Bryars too, Judge, and I --

THE COURT: Judy Bryars, he put conversation with defendant about why he killed the victim.

MR. PRESTON: Right.

THE COURT: And conversations with the defendant, referring to the fact that he shot at Sullivan.

MR. PRESTON: Shot at -- okay. That's what I couldn't read here. The lumping together of Welsh, Juliano, Davis and Clemens' testimony, I'm not sure what that contained.

There is so much in there, I got to review that in detail. It's -- there is too much. The physical evidence that came in, I think the -- again, I have trouble with the --

THE COURT: The jacket and the photograph.

MR. PRESTON: The jacket, the photograph, the written confession that he wants introduced goes to the same issue of removing the aggravating factor. It's the same purpose. The domestic violence complaint is, on its face --

THE COURT: Does either of you have conveniently a copy S-5? That's the F.B.I. three page statement.

MR. PRESTON: I don't have it with me, Judge, I'm sorry.

THE COURT: I can get the original if I need it.

MR. TALASNIK: I have a copy here.

THE COURT: Sheriff.

MR. PRESTON: I have it.

SHERIFF: Okay.

THE COURT: All right. Mr. Preston, I'm going to hear -- I'm sorry.

MR. PRESTON: I just -- the scene photos. The scene photos tend to go in the -- I'd have to review them individually. I can perceive one area of relevance in terms of the proximity of Patrick Sullivan, if there was some testimony or some use that could be made there. What I don't recall, and I don't think that there is any testimony that's been referred to that establishes the scene photos as showing that proximity, and so the only purpose that I could perceive it for, there is nothing in the record that could be used to develop -- they would just be sitting there for the jury's speculation, so they would be objectionable on that ground.

THE COURT: All right, thank you.

MR. PRESTON: The --

THE COURT: Oh.

MR. PRESTON: I was -- Your Honor was reading and I didn't want to disturb you.

THE COURT: That's all right, go ahead.

MR. PRESTON: The problem with the domestic violence complaint is that everything that the State has introduced about Mr.

Highlander's fear of avoiding prosecution arose not from the domestic violence complaint but from the aggravated assault indictment. The domestic violence complaint is not the basis for revoking his probation, it's the aggravated assault indictment. The violence complaint, as I started to say earlier, has nothing to do with the aggravating factor.

THE COURT: Okay, and I believe the answer to that, if there is one, is that the question I posed to you before, and because, basically, other than in the context that I suggested, I agree with you.

MR. PRESTON: I'll address that further. It's going to have to be explored more than I can do right now. S-41, in connection with that, even if the original, or one copy of the complaint can be put in, this shield of the one that was carried by the victim that the prosecutor waved in front of the jury, is outrageous. I mean, it doesn't go to an aggravating factor, it plays on their emotions. Judge, I'm going to review the transcripts that I have. If necessary, I will obtain the few that I don't have, and hopefully, be in a better

position to present you with what I need to do to object to these things, but right now, I think we have a serious problem with the scope.

THE COURT: Mr. Talasnik, what's your reaction to all of that?

MR. TALASNIK: Well, let me try to address the problem by focusing upon what relates to which aggravating factor.

THE COURT: Well, for example.

MR. TALASNIK: Well, for example.

THE COURT: S-33, which aggravating factor that refers to?

MR. TALASNIK: Your Honor, that is based upon the -- well, to me, it relates to aggravating factor number one in the sense that I have to demonstrate that the defendant purposely created a grave risk of death to the defendant -- to victim Sullivan by firing a shot or by approaching the two of them together, and then independently by firing a shot in this general direction.

THE COURT: That's not the shot that S-33 depicts.

MR. TALASNIK: In here --

THE COURT: Mr. Preston articulated

his objection in that area, I suppose it is a given, by virtue of the jury verdict on that count, that they agree that he took a shot at him, and as a result, probably S-33, and the jacket as well, are no longer relevant to that factor. Now, let's talk --

MR. TALASNIK: I'll withdraw them.

THE COURT: Let's talk about forty-one, the shield --

MR. TALASNIK: 41.

THE COURT: -- As Mr. Preston calls it, and as I'm quoting you.

MR. TALASNIK: All right. Many of the pieces of testimonial and documentary evidence that are being offered are offered to show the victim's determination or resolve to prosecute the charge against the defendant, that the defendant was aware of that determination or resolve.

THE COURT: Okay, let me ask you to respond in a more general way. I share some of Mr. Preston's concerns, without, for the moment, identifying those in my mind that are greater or lesser with respect to particular exhibits or particular elements of testimony,

but I share his concern that your approach, as you outlined it, is somewhat broader than I think is contemplated. I would tend, as I suggest to Mr. Preston, to have a different view than he might have, and after reviewing it, he may agree with me, but anything that directly relates to the victim's state of mind, of which the defendant may be inferred to have knowledge regarding her commitment to pursue the charges, is in the category that I'd perceive to have relevance here. The fact and circumstances of his shot at Sullivan have relevance, but, for example, among the things Mr. Preston said that I agree with, and there are several, and the concept of the circumstances of his having the gun, for example, when he got it, where he stored it, that he went back and picked it up during the day, any of his comments that he was going to kill her, apart from comments in the context of why, certainly anything from her parents or Henderson or anybody else relating to anything having to do with her sense of her commitment to pursue the charges, those are the general categories of what Mr. Preston had to say that caused me substantial concern as well.

MR. TALASNIK: All right. First off, in the proffer, I thought that I was careful to articulate that the only evidence or testimonial evidence that was being referred to with respect to statements by the defendant of an intent to kill were directly connected to indications that he intended to kill her for the purpose of preventing her, for instance. I'm not sure about that, but as long as you take that position, it's very simple.

MR. TALASNIK: Absolutely. In fact, one of the witnesses not proferred, or at least conversation not proffered, is the conversation with Rufus Duff regarding offering him five thousand dollars to kill Gloria, cause he never said why he wanted her dead.

THE COURT: Okay, so as long as we agree that any conversation that you -- you contribute a statement to the defendant by an intention to kill her is limited to any conversation in which it is asserted that he indicated that his intent to kill her was in connection with his concern about the charge or the jail.

MR. TALASNIK: That was my intent

in the proffer made.

THE COURT: What about the gun?

MR. TALASNIK: With respect to the gun, and particularly focusing upon the proffer made by Mr. Reed, the proffer was that when the gun was acquired, it was shown to Mr. Reed with an indication that he was going to use it to kill Gloria as a result of these charges. Now, the time or the day that he got the gun or the description of the gun, none of that is being proffered. Only the fact that upon its acquisition, and being shown to Reed, there was an indication of its intended purpose.

THE COURT: Okay. Okay means I hear you and I understand what you're saying. You did indicate in the proffer of Duff that you will refer to his testimony about the storing, the checking, the ultimate obtaining of the gun. I can't perceive how any of that has any relevence. Now, you've indicated also that you proffer Duff with respect to conversations that he had with the defendant regarding problems with the victim and the charges and his concern about jail. To me, those -- that proffer as to Duff makes the point. I think some of it is

clearly relevant and some of it is clearly not.

MR. TALASNIK: I understand the Court's point that there was, or there is a proffer of a relevant conversation that he had problems with the victim and concern over going to jail.

THE COURT: But all that testimony that Duff gave about they originally brought the gun to him, that he came back that morning and checked it out, that he checked it out that night and picked it up, I agree with Mr. Preston, I don't think that has anything to do with it.

MR. TALASNIK: I think that's appropriate and I can describe the same reference with respect to Mr. Chambers.

THE COURT: Yes, I think that's true, I think Chambers, I think to the extent that you proffer as to him, I think, is probably limited to the circumstances of his observation of Sullivan, his notation that there were three shots, and his conversation after the fact with the defendant regarding Sullivan, and for example, that which I perceive that you mentioned shouldn't be there is the notion that

you were going to proffer Chambers' testimony to the effect that the defendant saw the victim's car there at some time prior to the shooting. Again, all of that was very relevant for another purpose. It isn't relevant here, I suggest.

MR. TALASNIK: I can strike those.

THE COURT: Okay.

MR. TALASNIK: I do so. The other, I'm trying to remember, the other concern that the Court expressed -- what was the last concern?

THE COURT: I asked about S-5, and the reason that I did was because I didn't recall. I have now reviewed it, there is only, in my view, one or two lines in S-5 that is relevant here.

MR. TALASNIK: That's the purpose.

THE COURT: Those are at the very end. Now, I don't know how, maybe we can excise it for that purpose, if you will, but in my view, a quick look at S-5, which I have just accomplished, which is the three pages, suggests to me that -- it's on top of the third page, and you can get the text out and read it, you have it there, it's only at the top of the third page

of the statement papers, you just touched it over.

MR. TALASNIK: I -- there is another reason why I felt that it was relevant, and that has to do with, on the first page you begin with references to the multi-count indictment, that he made attempts, but that reference there is purely chronological. I think it says something like subsequent to the return. There is nothing necessary that says, in the defendant's words, which legally he may be said to have adopted, that subsequent to and as a result of.

MR. TALASNIK: Okay, I see.

THE COURT: Et cetera, if you look at the very end. If you look at the very end of that statement, at the top of the third page, I forget the exact wording, but there is a reference there to a concern about violating probation and the relationship between the fact of the charges and the violation of probation. To that extent, such a statement may properly be here, but to the extent that in two and a half of those three pages, he outlines exactly what he did. Other than to the extent that it refers

to Sullivan, and I frankly don't recall whether -- I think the statement makes a passing reference to Sullivan, other than that, I perceive that statement basically to be irrelevant.

MR. PRESTON: Judge, in that regard, if he read those lines thought and were relevant to the jury, but the statement didn't go to the jury, I mean, there --

THE COURT: Well, I -- Mr. Preston, you are probably right, but in fact, you are right, but we have to remember we're not writing on an entirely clean slate here. The jury has already had four hours to have that statement, for all I know they could have committed it to memory. If we were -- if we were going from the very beginning, I would excise the statement as you suggest.

MR. PRESTON: It reminds me of a concession that I should not make, and I withdraw, I withdraw the suggestion that it should be done that way.

THE COURT: I'm just saying, it's fanciful to pretend that the jury didn't have the statement that it did. Let me just go

through with you quickly, Mr. Talasnik, to show you the kinds of concerns I have. And I've already indicated about S-5. S-13, as I've suggested, I perceive has nothing to do with what we're here about. I'm not sure I agree with Mr. Preston about the scenes, the photographs of the scene. I think that separately and collectively, particulary, again, since they've already seen them all, they may, in the collective, set a framework of the geographic or the -- not geographic, the physical circumstances, if you will, or the layout of the area that have a relevance to the concept of where Sullivan was positioned with respect to her and the graveness of the risk of death, so I don't have a lot of conceptual problems with those photographs. S-33, as I've said, I perceive is manifestly inappropriate here. S-36, I think is appropriate, at least tentatively, as is S-37, and are S-38, S-41.

MR. PRESTON: Judge, about the bullets.

THE COURT: Oh, I think flying lead, Mr. Preston.

MR. PRESTON: The fragments, not

-- I -- I'm talking about, he must have said then, the bullets that went through Simonelli, too.

THE COURT: Okay. I agree, I mean, if you want to -- if you want to cut the cheese that way, then I agree with you. The particular piece of lead and the particular metal jacket that came out of her liver and her back, I agree.

MR. PRESTON: Assume --

THE COURT: I'm -- I'm going to have to look at this. Take a look at it. As far as I'm concerned, if there is testimony from which the jury could conclude, and I think there is, that there was a shot fired from which also pieces of lead flying around the scene, by me, that speaks to the question of grave risk of death, but I agree with you that those two pieces, I think they were six and seven of the -- or the last two, the highest number, whatever they were, the interior envelopes, that they were testified as having been the fragments, two of the fragments that were removed from her body, I agree that comes under the heading of the autopsy pictures and the

jacket. Forty-four is an easy one for me. 41 is another area, and that's the one I addressed Mr. Preston's attention to, and you need not respond to it, Mr. Preston, until you've had a better shot why you think I'm wrong. I suggest, on reflection, you're going to have a lot of trouble, but take your best shot. You got three days to do it. I think an argument again can be made with respect to some of this evidence, and this is the only documentary piece that directly implicates it, but there's a good bit of testimonial evidence in this respect. But anything that can fairly be said to relate directly to her state of mind, her statements and her actions with respect to her commitment to prosecute and to pursue the charges of which he may be said, inferentially or directly to have had knowledge, are relevant.

MR. PRESTON: There is no evidence whatsoever that he knew she was carrying that on her person, so the fact that she was carrying it on her person is irrelevant.

THE COURT: That's not what I mean. The fact that she was carrying it on her, there is, I agree with you, no evidence to

suggest that he knew that. There is, however, evidence to suggest that the carrying of it on her person is inferential of her state of mind and that he, indeed, had knowledge of her state of mind.

MR. PRESTON: Right, but the problem, Judge, is that we have -- I think that even in the guilt phase trial there was a grave mistake made here in the logical analysis of this. The question is, if she intended to prove, to pursue the charge and he knew about it, that connection is relevant. If she intended to pursue the charge and he didn't know about it, let's take the four alternative positions, and he didn't know about it, then he can't say that that was his motive, even though she intended to pursue it, his failure, his failure removes the motive. That's the first situation. Now, let's say that with respect to objective, the charge doesn't exist, she's not pursuing anything but he thinks she is, the motive is there. The charge doesn't exist and he doesn't -- and he obviously knows it doesn't exist, there is no motive there. In the four square analysis of the four options, the

determining factor is what he knew. What she had is totally irrelevant except, and only except the connection that he makes with the knowledge in his mind of what she's doing, she could --

THE COURT: No question about it.

MR. PRESTON: She could be intending to run over him with a car tomorrow in pursuit of her charges, but if he don't know about it, it don't matter.

THE COURT: Your analysis is absolutely correct but incomplete. Your analysis that the proper point of focus is on what he knew and what, therefore, it had to do with his motivation and the reasons for his conduct is absolutely right, but what you want to do is to draw a box that no one you can draw. The jury is entitled, was and is, and will be entitled to draw inferences about what he knew from what she did.

MR. PRESTON: But they have to have some basis for him knowing what she did.

THE COURT: No.

MR. PRESTON: There is no basis.

THE COURT: I suggest --

MR. PRESTON: There is no basis in the evidence whatsoever.

THE COURT: You're making it too narrow. They don't -- he doesn't have to know, and there is no evidence that I've heard yet that would suggest that he knew that she carried the piece of paper in her pocket, and I suggest the prosecutor's not going to be able to prove anything of that nature.

MR. PRESTON: Well, then what's the relevance?

THE COURT: Relevance is that carrying the piece of paper in her pocket may be a fact that the jury can consider in evaluating the fact, nature and extent of her commitment to it, which, in turn, is a basis to conclude what he knew, and of which there are also not only circumstantial but direct evidence. I haven't ruled on that piece of paper, Mr. Preston. I don't propose to this afternoon. I am simply, for the guidance of both of you, trying to draw certain lines, closer, frankly, Mr. Preston, to the ones you would have me draw than Mr. Talasnik started out with, because I think basically you're right. I think the one area of

substantial substance where I would not necessarily agree with where you've gone is in this general area. I think, now it gets a little sensitive at points. For example, the proffer of the testimony of the parents, I think most of the proffer of the testimony of the parents that you made is improper. For example, the fact of their testimony of their observations of relationship between the defendant and the victim, I think that's improper.

MR. TALASNIK: I -- I --

THE COURT: I think that the testimony of the parents regarding her appearance after the March incident is improper, and I note in that regard that you didn't proffer the two pictures in that respect, which I think would be improper too. But to the extent that you proffer the parent's testimony regarding her statements to the police the fact of them -- and her statements to them about her intent to pursue the prosecution, that's a relevant area, and that's the kind of a line, Mr. Preston, that I'm trying to draw here. I'm not ruling specifically, other than to the

extent I've already done so, anything in or out. I'm simply trying to draw a line, Mr. Talasnik, somewhat closer than you were to where Mr. Talasnik is, to where Mr. Preston is, and as I've said, I'm not -- I don't draw it exactly where he does, because there's a category of evidence and I don't today make a ruling about S-41 one way or the other, but it seems to me this is right on the line somewhere, because if it gets in at all, it guess, in my view, only to the extent, and maybe it should be charged that it should get in, I don't know, I haven't gotten to the process of limiting charges, if it gets in at all, it gets in only to the extent that it's usable to draw an inference with respect to that which he might have known about her commitment.

MR. TALASNIK: That's the only purpose of it.

MR. PRESTON: The one factor that's left out in all this analysis is the Rule 4 problem and the problem which is the Supreme Court --

THE COURT: I haven't gotten that far.

MR. PRESTON: Cumulative stuff.

THE COURT: I haven't gotten that far, Mr. Preston, and you could well be right. Again, however, I would caution you, and I'm not making a ruling for analysis here yet, because I really -- I don't have it good enough in my hands yet, but I caution you about any Rule 4 argument in the context of this proceeding.

MR. PRESTON: Well --

THE COURT: That means --

MR. PRESTON: There's -- I still have to raise Rule 4 because the submission of the aggravating factors are bound by the Rules of Evidence.

THE COURT: Of course they are, of course they are. All I'm trying to suggest to you is that in any Rule 4 type analysis, I am, as you well know, required to balance the capacity -- the probative value against the capacity for undue prejudice. Like it or not, and I know that you don't, and I find it somewhat difficult to adapt the Rule 4 analysis to this type of proceeding, as I've already mentioned in regard of the statement, like it or not, my analysis of the capacity for undue

prejudice must, of necessity, take into consideration the fact that the jury had the document.

MR. PRESTON: That's not my point when I raise Rule 4. I understand that, and I realize the situation that we're dealing with with respect to that. What I'm dealing with, Judge, is the discussions in the capital cases about the timing and the introduction of the evidence, the capacity for prejudice that is said and discussed by the Court, even in light of the fact that they already heard that stuff in the guilt phase, the inflammatory problem came up when it came in the penalty phase and it became a promotion for aggravating factors.

THE COURT: I understand that, and in general, without limiting myself in any way to any specific proffer, I agree with that approach, and what I'm suggesting, Mr. Talasnik, without making any specific ruling here, other than the ones we've already discussed and that you know of, is that you need to cut with a sharper knife on, or point with a sharper pencil, whatever analogy you want to use. I think it is important to target two concepts,

the concepts obviously that are identified in the aggravating factors, and therefore, anything that is directly related to the fact, reason and circumstances of a shot at Sullivan, and anything that is related to any testimony or exhibit regarding the defendant's statements or actions as to why he killed her, anything that relates to the fact of the charges that she filed, the timing and statements or actions that she gave with respect to her commitment to prosecute them is relevant, and I've tried to phrase those two areas broadly, because I think that's essentially it. I think other than that is, in my view, not relevant, and I've tried to go through this today for guidance for both of you to show some things that I think clearly are and some things I think clearly are not. There are going to be a couple of things, S-41 being the one most immediately comes to my mind, will be a couple of things that are right close, and I agree with you, Mr. Preston, when we get to those few that are close, among other means of analysis, Rule 4 comes into play, so we will, with those guidelines, Mr. Talasnik, you may proceed on Monday and we'll take it, Mr.

Preston, as it comes. Now, having done all of that --

MR. PRESTON: Judge, one thing that did occur was the business about the three shots. In light of all our discussions today, I'm of the inclination that the testimony about three shots being fired is in the same -- in the same vein of being objectionable, and just so you have that in your mind.

THE COURT: Well, okay, I don't want to catch you by surprise later on. I won't rule on it today, but let me give you my first reaction to that. The first shot, as I understand it, didn't hit a person, or didn't hit the -- didn't hit, if I understand the testimony correctly, the first shot went through her jacket and a couple of places and then went somewhere else.

THE COURT: Query, and I'm asking this at the moment rhetorically, does that shot create a grave risk of death to Patrick Sullivan? I don't know the answer to that, it's something to think about. I'm talking about in terms of we have to exhibit -- exist -- we have to accept as a given what the jury's

verdict was. We have to accept that, first of all, the jury isn't going to find that there were more than three shots, no way that's going to happen, so that's a given. The other given that we're dealing with is that one shot went to Patrick Sullivan, was aimed at him or shot at him, that they found that by their counter. Gloria Simonelli had to die from a bullet. There is the second shot.

MR. PRESTON: You're talking about the third shot.

THE COURT: Talking about the first shot.

MR. PRESTON: Or the first shot out of three. All the testimony about the fact that three shots were fired, I don't think is relevant, and there is no issue about it, no nothing.

THE COURT: My first reaction, and this is not a ruling, okay, but I'll tell you so you understand my thought process. In my view, the fact of three shots is relevant because it is a fact that the jury can consider in evaluating whether there was, and if so, how serious there -- it was of a grave risk of

death to Sullivan. There's a graver risk, it seems to me, with three shots than one, and I think that's a conclusion that the jury could draw. Any detail about the fact of the second shot, in my view, is irrelevant because it had nothing to do with Patrick Sullivan, and furthermore -- well, all I'm saying is that my thought process suggests to me that the simple fact that there were three shots is, indeed, a relevant factor. In addition to that, as you have correctly observed, the undisputed testimony is that there were three shots. It, therefore, in my view, is a fact, the prejudicial capacity for which is miniscule.

MR. PRESTON: It's also an undisputed fact, and it's the State's own evidence which they never raised a spector of, and neither did the defense, that the first two shots were fired right at Simonelli, not at Sullivan.

THE COURT: Yes, without question, but the jury, I think, I suggested to you, and I don't know that -- well, thought I suggested to you that the jury could conclude in its mind that the first shot which was fired at her and

can and what it did and didn't do, what it didn't do, the jury could conclude that by reason of where she was and he was, that the firing of that shot contributing to a grave risk of death to Sullivan. They could conclude that, Mr. Preston, I'm not suggesting that they have to, but it is something that they may consider in evaluating whether there was created a grave risk to Sullivan, and whether it was created purposely. Keep in mind that they're not being asked here to decide whether there was an assault on Sullivan. They've already answered that question in a variety of ways. They are being asked to determine whether the defendant purposely or knowingly created a grave risk of death to Sullivan and a shot fired at her that misses her can, depending on where Sullivan was, I mean, you're just as smart as I am, you can imagine easily a prosecution that would take the position that he never intended to shot at Sullivan to begin with, he was firing at her and hit Sullivan by accident. What do you want to call that? There is a word for it and we can discuss it. Might not be purposeful or knowing murder as to Sullivan, might be one form or

another of manslaughter, but it is, nevertheless, among other things, arguably on those facts, the creation of a grave risk of did he know, even if he had no intention of hurting Sullivan. My point is only that those are the kinds of things we might need to explore. Now, having reviewed all of that, let me ask Mr. Preston, pursuant to the rule, if you will first identify for the record at this point the mitigating factors, evidence of which the defendant will seek to address to the attention of the jury.

MR. PRESTON: Factor A.

THE COURT: Wait, let me, so we don't use legal shorthand here among us lawyers, by which you refer, I assume, to the notion that the defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to the prosecution.

MR. PRESTON: Correct. Factor D.

THE COURT: Wait. I'm still writing out A, extreme mental or emotional disturbance. Factor D.

MR. PRESTON: D.

THE COURT: Capacity to appreciate

the wrongfulness or to conform conduct to the requirements of the law was significantly impaired.

MR. PRESTON: Factor H.

THE COURT: I'm not going to let you leave D that quickly.

MR. PRESTON: In any of its forms, factor D.

THE COURT: You're going to assert at this point intoxication or mental disease or defect.

MR. PRESTON: Any of its forms, yes, Judge.

THE COURT: All right. I indicated to you yesterday, or this morning, that, in my view, on the state of the record, that it is apparent to me at this moment, you have a prima facie basis to argue to the jury on the intoxication aspect of that. I have suggested to you that at this stage of the proofs, which is obviously a very preliminary stage, I don't perceive anything yet that permits the -- the arguing of the mental disease or defect. I acknowledge I haven't seen or heard any proofs, I'm just simply advising you.

MR. PRESTON: Am I going to have to present my evidence before my witnesses testify?

THE COURT: I haven't asked you anything, I'm simply making a statement.

MR. PRESTON: Oh, okay. I understand, Judge.

THE COURT: And you indicated E, which is?

MR. PRESTON: I indicated H.

THE COURT: H, which is, any other factor. Are you prepared at this point to denominate the kinds of any other factors that you're talking about?

MR. PRESTON: The discovery that I have provided is to Mr. Talasnik at this point contains a report by my experts or --

THE COURT: The names are --

MR. PRESTON: Cessie Alphonso.

THE COURT: Cessie.

MR. PRESTON: C-E-S-S-I-E.

THE COURT: Alphonso.

MR. PRESTON: A-L-P-H-O-N-S-O.

THE COURT: And who else?

MR. PRESTON: Doctor Dyer.

THE COURT: D-Y-E-R.

MR. PRESTON: Yeah.

THE COURT: Those reports and the C.V. of those witnesses have been provided?

MR. PRESTON: Yes, the C.V. on Alphonso was, I believe, delivered separately today.

THE COURT: Okay. Mr. Talasnik, you have those reports?

MR. TALASNIK: A large package was presented to me this morning and it was represented that the reports are in there. I haven't physically gone through the package. I am sure they're there.

THE COURT: And have you provided, as far as you're concerned, all of the discovery that would be necessary and appropriate with respect to the proofs that you intend to adduce?

MR. PRESTON: Everything that I will refer to in the penalty phase has been provided to Mr. Talasnik.

THE COURT: Okay. That's fine. You have indicated to me that you intend to call Miss Alphonso and Doctor Dyer. Further, that at least one of them, if not both, will be

testifying from and on the basis of and with respect to a certain video tape that you've also supplied a copy of to Mr. Talasnik, is that correct?

MR. PRESTON: That's correct.

THE COURT: Okay. Mr. Talasnik, is there anything else that you, at this point, wish to know with respect to the defense submissions?

MR. TALASNIK: Only if there is a witness list available over and above the two experts that have been represented.

MR. PRESTON: I anticipate at this time that I will call Investigator Carol Young to establish the single document that was seized by the prosecutor within the defendant's briefcase that had been left at the Atlantic Palace, I believe, prior to the homicide. That should be quickly done. I don't believe there'll be anything to that. And other than that, at this time, I do not foresee any other witnesses besides those two.

THE COURT: Those three.

MR. PRESTON: Those three.

THE COURT: Alphonso, Dyer and

Young. Is that correct?

MR. PRESTON: That's correct, Judge.

THE COURT: Okay. Mr. Talasnik, do you have any other questions?

MR. TALASNIK: No, thank you, Your Honor.

THE COURT: Okay. Now, that leaves me, I think with two more issues, one I haven't mentioned to you yet, but we'll get to that at the end. The next thing I want to discuss is the opening remarks that I will have to make to the jury at the commencement of the proceedings on Monday morning. I have presented you with a three page proposal. There is one gap in it with respect to anything that I would say about mitigating factors. Let me leave that issue out, Mr. Preston, and we'll talk about the separately in a moment, and ask either of you if either of you have any comments. Again, the comments I'm soliciting, is there anything in there that shouldn't be in there, is there anything in there that's not in there that should be, and is there anything in there that you would have said other than what it is.

MR. TALASNIK: Your Honor, State has no objections or suggestions or additions or deletions to the form prepared by the Court.

THE COURT: All right, Mr. Preston.

MR. PRESTON: May I have a moment, Judge, please?

THE COURT: Yes.

MR. PRESTON: Judge, with respect to the -- to the charge proposed by the Court, I've already provided to the Court, I think, with a copy of the charge that I initially proposed.

THE COURT: Time out while I --

MR. PRESTON: If I have -- I have a copy here.

THE COURT: Well, I have it. Wait a minute, I have -- this is Judge Neustadter's. Yes, you did, I have it.

MR. PRESTON: Is it denominated?

THE COURT: No, unfortunately, I have no pages on it.

MR. PRESTON: Is it denominated State vs. Richard Highlander or just the rough copy?

THE COURT: No, it says -- there

is a cover sheet on it from this case, says instructions at the commencement of the penalty phase, not dated, but has your name on it.

MR. PRESTON: I have one that is dated, Judge. I ask that it be marked and be accepted with the -- with the Court.

THE COURT: I don't know whether it needs to be marked. I'll receive it.

MR. PRESTON: And --

THE COURT: The cover page is exactly the same except for the date.

MR. PRESTON: Except that it was undated.

THE COURT: The -- it looks to be the same. I had prepared one for filing. I want to make sure it's the same. The first page is identical, second page appears to be identical, the third page appears identical. This looks like the one you've already given me.

MR. PRESTON: I think it is, Judge.

THE COURT: The difference is that the one I had doesn't have a date on.

MR. PRESTON: Signed and dated, the one I had just now.

THE COURT: The same one, I ask

that the --

THE COURT: The one that you have marked is -- .

MR. PRESTON: Be marked and received into the record of the case. With respect to the charge that the -- that the Court is proposing, I have attempted to see if I could work with that charge. At this point, I must begin by saying I object to the charge in its entirety and ask the Court give the charge that I propose. I find that I have many problems with it, and I raise as objections each of the differences and distinctions between the charge that I propose and the charge that the Court has presented me with, and the Court has had my charge now for a little bit of time. I'm assuming that, I think, in good faith, that you've read it, Judge.

THE COURT: Would you like to see my notation on it?

MR. PRESTON: I'm sure that it is, Judge, that's why I'm proceeding in this fashion. We both had a chance to look at each other's work for awhile. Some of the problems with the charge that you have, just as examples,

Judge, and not to say that these are any more egregious than the other differences, but I think that they are -- that they are real problems, is the -- let's see, in the paragraph which begins on the second page, if you do unanimously agree, the second sentence there, the law defines mitigating factor as a factor or circumstance that may tend to decrease the severity or punishment that would otherwise be appropriate for a murder in the case.

THE COURT: For a murder case.

MR. PRESTON: For a murder case. The clear implication there and the clear meaning there is that -- is that the death penalty is appropriate for a murder case unless there are mitigating factors presented, and I don't think that that's the law.

THE COURT: I don't think that's the law either, but --

MR. PRESTON: The contrast is --

THE COURT: I don't understand how you call that.

MR. PRESTON: Otherwise be appropriate for a murder case, there are only two choices, there are only two choices, life

serve thirty, to use a shorthand, or the death penalty.

THE COURT: That's not exactly an accurate description of the other choice.

MR. PRESTON: Well, would otherwise --

THE COURT: Thirty to life, serve thirty.

MR. PRESTON: But the mitigating factors of the statute will not have any effects by the jury on any length of a prison term.

THE COURT: I understand that.

MR. PRESTON: So their only choice is between imprisonment or life.

THE COURT: You didn't define mitigating factor in your presentation, Mr. Preston.

MR. PRESTON: In my presentation, Judge?

THE COURT: Yeah.

MR. PRESTON: I --

THE COURT: At least if you did, I missed it. Your pages aren't numbered but your discussion starts--

MR. PRESTON: I'm sorting out in my

own mind just to make certain what is in my proposed opening and what is in my proposed closing, I just want to double check.

THE COURT: The fourth page here talks about mitigating factors but doesn't define it. If you'd like to tell me how you would have mitigating factor defined, I'll be happy to receive your suggestion, if I feel that the opening is the appropriate place to define it.

MR. PRESTON: May I just have one moment to read. In discussion of the case is -- this the Court had said that it is not simply good enough to recite the mitigating factors without some sort of explanation. That is where this discussion of defining mitigating factors arises, that concerning -- I'm not sure of the specific case number, I can't tell you that off hand. I just remember the discussion that there was a requirement with -- that the Court had to explain mitigating factors.

THE COURT: Can you --

MR. PRESTON: I know that discussion of explaining mitigating factors, the language that the Court used was the language

that I incorporate right here, and I believe that the Court's explanation of how the mitigating factors work is what is required, and not some other definition which, in the specific facts of the case, in the opening of the case, may tend to deviate from the proofs and what may otherwise be defined as mitigating factors in the specific application at the end of the case. That is why I've been cautioned by the Court, and I agree, that in terms of getting to specific, particular evidence coming in. I think that the -- that the definition and the treatment of mitigating factors that was given by the Court in that case, and I'm going to have to get the cite for you, I just remember the discussion where they said that the explanation is needed, is the explanation and the kind of functioning that the Court described. That functioning, I listed their language because I agree with that language, Judge, in terms of it not being an excuse, not negating guilt but it was a reason why justice does not require the execution of that kind of language. I thought it was very appropriate and I thought that that was the kind of explanation that the jury needed,

not some order of definition that we would give as a final charge about knowingly or what have you, purposeful mean or knowingly mean.

THE COURT: Okay, what's your next point?

MR. PRESTON: On that one, by the way, unless I get some specific reference, I'm happy with the language I have with one exception. I don't know why I have the word murder in there, I don't think it should be, because mitigating factors have a concept that is substantially beyond murder cases, but that's not a factor that's relevant for the jury. And in fact, the mitigating --

THE COURT: I don't know.

MR. PRESTON: That the mitigating factors that the Court uses in its own sentencing fall under a much different circumstance than the mitigating factors the jury's going to use.

THE COURT: Without question.

MR. PRESTON: So I think the confusion between the two --

THE COURT: I don't intend to confuse it, other than by deleting the word

murder.

MR. PRESTON: If we say otherwise appropriate for an occasion even, Judge, we're still left with a jury that -- with a situation in which the jury has only two choices, and if the mitigating factors go to one choice then it's saying that the alternative for the case itself, irrespective of aggravating factor, irrespective of the State's burder, is death. I think that's a misleading idea.

THE COURT: Okay. Next point.

MR. PRESTON: The law specifies the particular circumstances that a jury may have as mitigating factors. The problem here is the problem with the use of the definite article of the as to the exclusion of others. We have two conflicting ideas.

THE COURT: Which argument are you talking about?

MR. PRESTON: If the -- the law specifies the particular --

THE COURT: Let's read the whole sentence. The law specifies that particular circumstances that a jury may consider as mitigating factors, and also permits the jury to

consider in mitigation any evidence in the trial relevant to the defendant's character or record or to the circumstances of the offense.

MR. PRESTON: That's correct, Judge, and I'm going to make a contrasting statement about why the two sections of the sentence are created, and I'm also going to take issue with the words of may and permit and consider. The case law says not that the jury may consider, not the jury is, permitted to consider, but that the jury must consider. The trier of fact must consider the mitigating evidence. It may find it or it may not find it, but it must consider it. That's the case law, so insofar as that specific language deviates from that case law, and I certainly believe that not only is it just wrong because the cases say so, it's wrong on general principles.

THE COURT: Uh-huh.

MR. PRESTON: The problem also sets up a -- a dichotomy in the defendant's proofs to its disadvantage, that does not exist in the State's proof with respect to aggravating factors. In those catch-all aggravating factors, and we can run into some real problems

by dealing with the fact that there is no catch-all aggravating factor, but the law specifying, and there is, in fact, a limiting intent as to the mitigating factors that is not set forth in the case law. The case law is very expansive, that the jury has to be able to consider everything, that's why they throw in mitigating factor, that you can't have that restrictive connotation, so by saying in this particular circumstance that the jury may consider, and then contrasting it with the general character of record, I think sets up a concept that certainly goes to the defendant's disadvantage. It tears apart the integrity of the presentation that a mitigating defense is supposed to put on, that there is an unique whole picture of the defendant, some of which is specified in statutes, which some of is allowed for in mitigating factor H, but it's the position of the defendant as a whole unique individual which the jury is going to be evaluating. He's not -- they are not going to be evaluating him, a fragmented individual, that's what we're looking for, a unique individualized judgment of the defendant as a

whole person, that's the theme of sentencing, and it's the theme of sentencing with respect to even a jury. The case law in the capital cases pick that up, if that kind of fragmenting, I think, is absolutely wrong.

THE COURT: Is that all you have on that sentence?

MR. PRESTON: I have some other notes here. I'm just giving you specific examples, and I'll continue on.

THE COURT: Just -- let me know, sir, when you're done with that sentence.

MR. PRESTON: I will stop at that point with that sentence.

THE COURT: I'm going to change the word may to shall and change the word permits to the word directs.

MR. PRESTON: Passing the blank space for the time, there is some confusion in the treatments of the -- a great deal of confusion in the treatment of where unanimity is required and how it's not and how the two -- how the jury must distinguish their functions with respect to aggravating and mitigating factors and the unanimity and burdens, and the

example of that is the paragraph that begins, the defendant does not have to prove the existence of the mitigating factors beyond a reasonable doubt. Problem starts with the explanation, nor need the jury be unanimous on this point. I think there are difficulties there.

THE COURT: You care to tell me what they are?

MR. PRESTON: I think that the difficulty is that it leaves them in an uncertain state as to the function of their verdict and what they will be looking for is unani -- by talking about a negative, the unanimity in terms of the negative, you receive them wondering, well, where is our decision coming from, if we don't have to be unanimous, what is functioning here.

THE COURT: Are you suggesting that I should, at this point in the proceeding, then, give them some detail with respect to the process of determining the existence of evidence of mitigating factors?

MR. PRESTON: I am suggesting that what the Court has is deficient. I think that

you have to speak of Up -- of the jury finding mitigating factors, and I suggest to the Court that the language must be in a positive sense, that each individual juror finds it from himself, unhindered by the other jurors, rather than the terms of a negative sense that what they are not doing, you haven't told them what to do, you just told them what they can't do, what they're not doing, and as a lawyer, I can appreciate that when a Judge tells me in the middle of a trial, well, Mr. Preston, you can't do that, you can do anything else, but you can't do that, and I stand back and say, where can I go. This is the problem.

THE COURT: Okay. I hear you.

MR. PRESTON: I believe there is substantial compression of the paragraph discussing -- beginning with, if you should decide that there are both aggravating and mitigating factors present in the case, and that continues on the next page -- sheet that I have, I believe that it's compressed to the point of being confusing and generally doesn't need to explain every last detail, but it shouldn't leave the process open to wonderment and

speculation.

THE COURT: For the record, so that we're clear about what we're talking about, the original paragraph that Mr. Preston was referring to reads in its entirety as follows. "A defendant does not have to prove the existence of mitigating factors beyond a reasonable doubt, nor need the jury be unanimous on this point. I will explain later exactly how the jury considers this question." The next paragraph to which he makes reference reads in its entirety as follow, "If you should decide that there are both aggravating and mitigating factors present in this case, it will then be your obligation to weigh and balance those factors to determine beyond a reasonable doubt if the aggravating factors outweigh the mitigating factors, then the death penalty is the fitting and appropriate punishment in this case. If you unanimously so conclude, then I must sentence the defendant to death. Otherwise, I must sentence him to a term of imprisonment within the limits I have described." That is the paragraph. The latter paragraph is one to which Mr. Preston suggested

there is undue compression.

MR. PRESTON: There is undue compression, yes, Judge. The -- in that same paragraph, I have a problem, and I believe -- well, I must sentence the defendant to death in that same paragraph, has the Court followed that language?

THE COURT: I have.

MR. PRESTON: There is interjection of the judicial role between the jury's verdict of the death sentence. While it is procedurally correct, inferentially and logically it removes the jury from one step in the responsibility for their verdict. As an example of correction to that, I would remove the judicial role and indicate more closely the jury's sentence of death as being the responsible action. Judge, those are just some of the charges. I don't mean by specifying those that I, in any way lessen the differences between the charge I proposed and the charge that you've given. I just set them out for illumination.

THE COURT: Okay. I would like to hear form you in just a moment with respect to

how we should discuss that which I left blank, which is the discussion of the mitigating factors here.. With respect to the last two objections, I'm satisfied with the proposed language that is here. I am satisfied that what this instruction is is a very brief, sketchy overview of the general process that the jury's going to follow in the penalty phase. It is not, in my view, appropriate at this point to discuss in detail the process of finding mitigating factors, which I will discuss in substantial detail at the end of the penalty phase. I am satisfied that the so-called compression in the next paragraph is, in fact, an appropriate, accurate and brief description of the nature of the process that is, in fact, compressed as it is designed to be, and in my view, should be at this preliminary phase of the penalty proceeding.

With respect to the language, if you unanimously so conclude, referring to the jury's determination, beyond a reasonable doubt to be aggravating factors outweigh the mitigating and that the death penalty is the fitting and appropriate penalty, the language,

quote, and that I must sentence the defendant to death, end quote, in my view, not only does not tend to viciate the jury's sense of responsibility, it is language that I believe carefully crafted to suggest that the jury can tell the Judge, and will tell the Judge what to do. I am satisfied that it is both a procedurally accurate and substantively appropriate reference to the proper realm of the jury deciding what the sentence will be and the Judge imposing it at their decision and at their direction.

What that leaves, Mr. Preston, is I have put in here, in this case the defendant asserts as mitigating factors that . . . I will accept any recommendation that you would have at this point for how I should fill in it dots.

MR. PRESTON: I would suggest that the Court indicate to the jury that the defendant will put in, will propose that mitigating evidence, mitigating evidence concerning defendant's emotional, mental and physical states. I think that will include intoxication also.

THE COURT: You want me to refer to

intoxication specifically or just say physical, emotional and mental?

MR. PRESTON: I think I would say and physical condition.

THE COURT: Emotional and mental states and physical condition.

MR. PRESTON: Yes, physical condition. Both at the time of the commission of the offense and at other pertinent times in his life, and I would phrase it that way.

THE COURT: Both at the time of the commission and at other pertinent --

MR. PRESTON: Times in his life.

THE COURT: Times in his life.

MR. PRESTON: Okay. I would also, and I pick up now from the charge that I proposed, the supplemental language to go with that is, and I think this is important, especially with regard --

THE COURT: Just give me a page reference by the count, if not by the --

MR. PRESTON: I can give you by the count, Judge, one, two, three, four, on the fifth page.

THE COURT: What's the first

paragraph on the page?

MR. PRESTON: The first paragraph on the page is, defendant may present.

THE COURT: Yeah.

MR. PRESTON: Okay. And the language that I'm proposing is that, and this again is addressing the concerns of H and the case law that interprets it.

THE COURT: Where are you on the page?

MR. PRESTON: You must consider all the mitigating evidence, that paragraph, middle paragraph. With regard to H and the cases that say that the jury must consider mitigating evidence, that their -- that they are not to just be restricted by what the lawyers say, that they have an obligation to look at all of it themselves, I think that in addressing H and calling H to their attention, this paragraph is especially pertinent, you must consider all the mitigating evidence, not just the specific factors which the -- I'll change that factors to evidence, excuse me, Judge, not just the specific evidence which the defense may call to your attention. This evidence may have appeared

in the first part of the trial from the witnesses called by the State or by the defendant. Fairness in the law requires that you consider any other evidence in any part of this trial favorable to the defendant relating to his character or his background or the events surrounding the offense that may lead you to believe that the defendant should not be executed. I think that is the -- I believe it's necessary at the beginning of the trial to put the jurors on the alert that they have an affirmative investagory duty themselves, apart from just digesting what the lawyers think is important, and I think the case law specifies that they have that kind of duty.

THE COURT: Okay. I will word that, probably have a draft tomorrow, if you want to take a look at it, but I will accept that as a supplement to the specific language you just already suggested about his mental and emotional states and his physical condition.

MR. TALASNIK: Your Honor, the only request I would make with respect to the offered additional paragraph is that the last line be changed to correspond with other

references to the death penalty.

THE COURT: To the death penalty being the fitting and appropriate penalty.

MR. TALASNIK: Yes, that's the only problem.

THE COURT: I already wrote it down that way.

MR. TALASNIK: Thank you, Your Honor.

MR. PRESTON: Obviously, I ask for what I asked for.

THE COURT: I understand. I believe that the standard language that the jury should be given, which I have given in every instance, and which I will continue to give, is what they are determining ultimately is whether the death penalty is the fitting and appropriate punishment in the case.

MR. PRESTON: I want to renew an objection that I renewed with --

THE COURT: Let me just -- we've completed that discussion?

MR. PRESTON: This is the objection with respect to that discussion.

THE COURT: Okay.

MR. PRESTON: I want to renew an objection now that was made with respect to the guilt phase verdict sheet where we discussed death as the appropriate penalty, and my problem with the fact that by phrasing it that way, and by not connecting it with death will be imposed, by not connecting it with the jury's -- the immediate result of the jury's verdict, that we are deluding and separating the jury's responsibility. We are -- they are merely giving their opinion. The Court takes its own action, the law operates in its own way after the jury has delivered an opinion, that's not what the cases say. The cases say that the defendant's death is going to be a direct consequence and immediate responsibility of the jury's verdict. Every time we merely settle for language like death is the appropriate penalty, we sanitize their responsibility. I renew my objection on all of those points. We seem to be developing an aggregious pattern, at first -- at first, it was told to the defense in the penalty phase that we don't have to address that, yet it's going to be addressed by the penalty phase and it's not being -- it's being

patted over.

THE COURT: Well, you're right about one thing, it's going to be consistent. So noted. Okay. Does that cover everything, gentlemen, except for one item I have to ask about? Is there anything else that either of you has that you wish to address to my attention?

MR. TALASNIK: I have nothing, thank you, Your Honor.

MR. PRESTON: I take it we'll be addressing the objections to the State's proffers first thing Monday morning.

THE COURT: Well --

MR. PRESTON: I mean --.

THE COURT: I thought we gave it. I have tried to set guidelines that I expect will resolve most of the objections, other than with respect to the one piece of paper, which frankly, is a documentary exhibit that we can deal with at the end of the matter when the State proffers its exhibits. I don't know that that needs to be dealt with first thing. If there are any specific, if your review of the transcripts between now and Monday suggest to

you any specific comments or testimony that we haven't conceptually addressed here today that you wish to address to my attention on an in limine basis, I'll hear it, obviously. I think I've set guidelines today that I hope will resolve most of those.

MR. PRESTON: Because most of them, in my view, are rather clearly on one side of the line or the other.

THE COURT: There may be some things that are close, and if there are and your review of the transcripts suggest you wish to make in limine motions, I will certainly hear [illegible].

MR. PRESTON: I'm in a quandry as to what the Court's ruled on. Usually when we have a ruling on a particular issue we hear an item of testimony, the objection to that item of testimony is made, the reasons are stated, the Court rules on the testimony, we know where we stand. Right now I have a general statement, this is an area. I don't even know what's in the area. I'd like to think I have a reasonable memory, but I can't remember word for word what each of these witnesses said or how exactly it

came out right now. I'll look at the testimony, I'll look at the transcript and I might be able to find out some stuff, but to feel beyond right now, I'm not sure how Your Honor is binding me by what objections I've made or failed to make.

THE COURT: Well, Mr. Preston, I think the record here very clearly reflects, and I have bound you to any -- you can make any objection that you want. What I have said, and Mr. Talasnik, is I have to define for him the areas that I think are appropriate and the areas that are not, and I've given him some specific examples of things that are not appropriate. I don't think I have the ability or the responsibility to go through the record at this point, that I don't have, and to tell him exactly what testimony he can't use. I don't know that you have that responsibility either, and I'm not meaning to suggest that you do. I'm saying if your search of the record reflects anything that you specifically wish me to address, of course, I will address it. I'm not requiring you to do so, but I'm inviting that. I will respond to any specific request, if you ask me to do so. With respect to Mr. Talasnik's

presentation, he has what I consider to be appropriate guidelines from me to what he can and can't do.. Does that mean that I know or that he knows or that you know every specific ruling that I might make on any specific issue. I do not. I don't know how to do it otherwise.

MR. PRESTON: That -- we are discussing a very key problem in the way this procedure is structure.

THE COURT: I understand that.

MR. PRESTON: From what I understand, there are really two kinds of alternatives here. One is that knowing what he is inclined to do, I can make my objections to them -- to inadmissible or improper items during his opening, during his presentation, whatever, in front of the jury is, and obtain rulings on each individual one as they are raised and as they are presented. There is a unique situation here which is not present in other cases, and that is in other cases, motions in limine and sort of pre-rulings on evidence are not made because you don't know the context, you don't know how the evidence actually is going to come out to make them in advance is a

problem. But we do know, and we have the benefit right here, we have all of those reasons removed because we do know how the evidence came out, we do know what the question and the answer was, we do know the exact circumstances and the only thing we're applying is the purpose for which it's being admitted, which is something that is always phrased in terms of legal argument and could be done at any time and in a vacuum, once we have the evidence and once we have the transcript.

THE COURT: Well, Mr. Preston, I hear you, and what you say is certainly true and fair, but I don't have the record, I don't have the transcript, I don't have a recall, total or otherwise, of the specific testimony.

MR. PRESTON: No, I --

THE COURT: I will respond to whatever I'm asked to respond to, whenever I'm asked to respond to it. I have already told Mr. Talasnik what I think he can do of the proffer that he has made. Some of what I've told him I'm sure will result in his not doing that which you would not have him do.

MR. PRESTON: Maybe I've

misunderstood Your Honor. Maybe I have misunderstood where we're going in terms of what I would be able to do and what I will not be able to do and that phrasing that --

THE COURT: I don't think I have said or implied anything about what you would not be able to do. I think I said that you may make any in limine motion that you want, and I will hear them if you make them. If you choose not to make them in limine but wait until you feel you're in trouble, I will hear them when you feel you want my help. I don't know what else to do.

MR. PRESTON: I understand, I understand, Judge. Could I ask if Mr. Talasnik will renew his proffer, in light of your guidance, on Monday morning out of the presence of the jury. If that will happen, it's only a question of fact, will it or will it not happen.

MR. TALASNIK: I --

THE COURT: I'll tell you what I'm going to ask you to do, Mr. Talasnik, I'll tell you what I'm going to ask you to do. I'm going to ask you, between now and Monday, and the record, of course, is that this is Thursday

afternoon, I'm going to ask you between now and Monday to take another look at everything that you're going to want to argue to the jury, both in your opening and in your proffer, and I'm going ask you to make a bona fide effort to identify anything that you think might be close, understanding that I won't bind you, that if something you later tell me you didn't think was close turns out to be close, so be it, that's why people have different judgments, but I'm going have you to make a bona fide effort to identify, between now and then, things that you think might be close and to make a specific proffer with respect to them before we start on Monday, and we'll talk about it. Understanding, Mr. Preston, that after we do that, and I make whatever ruling I may make, there may yet be the need for other rulings thereafter.

MR. PRESTON: I'm not in the mood for prolonging things Monday. I have a timetable --

THE COURT: Mr. Preston, please don't suggest in any way that I'm holding you to a clock. This proceeding's not -- has not been, is not now and will not be done by the clock.

Whatever we need to do we'll do. Is the outline I have just given you satisfactory?

MR. PRESTON: Thank you, Judge.

THE COURT: Okay. Is there anything else either of you wishes to discuss with me?

MR. TALASNIK: No thank, Your Honor.

THE COURT: Okay, now, let me address another subject. It escaped my attention yesterday in the press of business, and also because in the great scheme of things, it was not overwhelmingly significant, but on the jury's verdict and on the judgments that were entered subject, of course, to the imposition of sentence, the bail, whatever bail was set in the matter, albeit never posted, is revoked and the defendant is ordered held without bail. The sheriff has addressed to my attention a question which I indicated I would discuss with counsel with respect to the defendant and his own arrangements, specifically, as I understand it, with respect to the question of handcuffs and the legcuffs that I notice that he has on today. Does either

of you desire to be heard?

MR. PRESTON: Judge, I think that the procedure that was followed for the trial should be followed for the penalty phase also. I think that it becomes even more critical that the jury not gather any adverse impression. At this point, you can say that yes, they know he's in jail, but they also know that he's in jail and he's here without handcuffs and without leg irons, and now to put him in the blues and with leg irons and handcuffs indicates the presumption that something more serious is going to happen.

THE COURT: I hadn't thought about the blues, by which I mean, I assume you mean the jail clothes, the jail clothes. I think they ought to be permitted to continue in the trial in the same fashion that he was before. Are there questions that are still open, and not jumping to any final conclusions, they are not ready to ship him out the door.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, my problem is with security and balancing the need for security against whatever prejudice there

may be, or undue prejudice there may be from the obviousness with which there is now additional security. We're in a situation where the defendant has been convicted of a first degree murder by the jury. The jury knows that. We're in an open courtroom setting, there are windows that are not distant from counsel table. I think Many that in the capital proceedings that were conducted in other courtrooms that there was a change in the level of security between the penalty phase and the guilt phase, and that some moderate adjustments in the interest of increased security along the lines that were [illegible] in the other capital proceedings are prudent and appropriate.

MR. PRESTON: Judge --

THE COURT: Let's make sure we know we're all talking about -- we're not talking about clothing. The defendant will have the right to wear whatever clothing he chooses to wear at his complete discretion, so as far as I'm concerned, that's entirely his business and I don't have anything to say about how he chooses to appear by way of clothing. I haven't, from the first, and he's worn what he

chooses to wear and he'll continue to wear what he chooses to wear. Second, I haven't asked anybody's opinion, and I'm not going to ask anybody's opinion about any security arrangements, increased or otherwise, because I don't propose to allow anybody here, other than me and the sheriff, to have anything to say about that, with one exception, and that's what I've addressed attention to how many sheriff's officers there are, where they sit in the courtroom and things of that nature are, to be very frank with you, with all due respect, none of your business.

MR. PRESTON: I would say one thing, Judge, and say in so far as those things might impact on the decision of what other -- whether other precautions are necessary, they might be.

THE COURT: I'll agree to that, I'll agree. What I meant was, you got nothing to say about how many there are. You may have something to say about the consequences of that, I agree with that. The only issue, frankly, of that I've opened for your input and that I intended to discuss, is frankly, very simple.

Does he wear handcuffs or does he wear legcuffs or either or both. All of the rest of it in my view is either none of my business or none of yours.

MR. PRESTON: I suggest, Judge, that he's been sitting behind a table, as he has been, between two counsel, that windows or anything else is going to require him to go through the table, number one. Number two, there have been sheriff's officers sitting behind him. I don't think that will be lessened in any way, if anything it may be increased. They may probably, and maybe will, in your discussions with the Sheriff's Office, be sitting closer to him. In that regard, I suggest the leg irons and the handcuffs are not necessary, that sufficient control can be shown, that it has been so far, that anything that might happen, as remote as it may be, can be adequately addressed in that fashion. Having leg irons on will not stop him from standing up. They will stop him from running across the room, but he's got to go through the table first, and the sheriff's officers are right there, the leg irons will never come into play. As to the

handcuffs, the same thing, any motions of the arms, by the time anything could come into play, any security that the Court is arranging, I'm sure the Court adequately addressed any security that's necessary to be addressed.

THE COURT: All right. I appreciate your input, it helps me. I will consult with the Sheriff and I'll have my own judgments made by Monday. If it implicates any question of handcuffs or legcuffs, I'll discuss it with you. In the meantime, as far as his attire is concerned, as I've said, that's entirely his call which he should make. Okay. Anything else that we need to talk about?

MR. PRESTON: No, Judge. I leave you with one final thought, and that is in the position of the defense in arguing to the jury, it's difficult to argue against any kind of perception that may be implied that the defendant is less than human. Well, the handcuffs and the leg irons and all that sort of stuff, it's hard to -- it's easy to kill someone who's an object, and I think in our cases, you don't want to create that type of death verdict.

THE COURT: I understand that, Mr.

Preston. I'll leave the rest of my reaction to that unspoken. All right. You have received the draft of the regulations with respect to elocution and you will, at the appropriate time, discuss those with the defendant.

MR. PRESTON: I will discuss, as I think I am obliged, the law on elocution, Judge. I'm still in a little bit of a quandry about the specific format of the way you're approaching it. And I'm going to have to look at that, I haven't had a chance to do that.

THE COURT: And I don't want you to, all I want you to do is to acknowledge the issue. I don't want a response from him or you.

MR. PRESTON: Certainly.

THE COURT: So the record is clear, the Supreme Court opinion in Zola discusses the substance of what I've written here, it is my view, albeit that it's not required in any case, that if the defendant is to make an intelligent decision as to whether he wishes to execute the right, he needs to be informed of exactly the substance and the procedural -- substantive and procedural limitations on the exercise of that right. I

have, therefore, chosen to translate that as the Court invites, but doesn't mandate, to a written document that I will require the defendant to review and to articulate that he understands. Once he has done that, any discussion that he makes is fine with me. And of course, after he's discussed it with counsel. All right, gentlemen, please, again, be here at 10:15 on Monday morning, unless you hear from me otherwise.

MR. PRESTON: Right.

C E R T I F I C A T E

I, KATHY E. DURAND, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC IN THE STATE OF NEW JERSEY DO CERTIFY THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN BY ME IN THE ABOVE CAPTIONED MATTER.

Kathy E. Durand

KATHY E. DURAND, CSR, CM
OFFICIAL COURT REPORTER
LICENSE NO. XI00868

DATE: 10-1-89

Jukes Intake

A-59-89T4

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
ATLANTIC COUNTY
INDICTMENT NO. 88-06-1553

REC'D
APPELLATE DIVISION
JUL 11 1990
Clerk

A-59-89T4 - 3-C

STATE OF NEW JERSEY,

Complainant,

-vs-

RICHARD HIGHLANDER,

Defendant.

TRANSCRIPT OF
PROCEEDINGS

Mays Landing, N.J.
June 26, 1989

B E F O R E:

HON. STEVEN P. PERSKIE, JSC.

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQ.

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

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THE COURT: First, so that the record is clear on a number of things, we were last here I guess on Thursday, at which time at the defendant's request the proceedings were adjourned till today. Couple things need to be placed on the record this morning just in the interest of completeness.

First there was some discussion on Thursday with respect to security arrangements. I determined shortly after our hearing on Thursday and advised Mr. Preston at that time that there would be no change in the security arrangements with respect to any handcuffing or leg cuffing of the defendant for the balance of the proceedings and that's as it is this morning.

Secondly, on Friday I supplied counsel with updated versions as of then for the opening and closing charges in this phase of the proceedings together with the proposal for a jury verdict form. I have today given counsel after the weekend the benefit of some additional thoughts with respect to those documents and pointed out to counsel where

what I perceive as my final draft that I gave them today varies from that which I gave them Friday. I of course will receive at the appropriate time with respect to the final charge and the verdict sheet such additional input and recommendations as either counsel may have.

I have received this morning from Mr. Preston a letter objecting to certain portions of the State's proffer with about three inches of transcript to support the objection which we will discuss in a few minutes. I think that exhausts my list of things to belabor the record with. What do you have, Mr. Preston?

MR. PRESTON: Judge, before we get into anything this morning, especially with respect to the objections to Mr. Talasnik's proffer, it may be that one preliminary motion will dispose of the bulk of the problem. At this time I would move to strike the aggravating factor of the defendant's purposefully and knowingly creating a grave risk of danger to another person. I do that considering the verdict

that was returned in the guilt phase of the trial.

THE COURT: First phase of the trial.

MR. PRESTON: First phase, pardon me. I do prefer Your Honor's labeling.

THE COURT: If we're going to educate the Supreme Court, we may as well start now.

MR. PRESTON: Yes. In the first phase of the trial the jury found Mr. Highlander not guilty of attempting to murder Patrick Sullivan.

THE COURT: And of attempting to cause serious bodily injury.

MR. PRESTON: And of attempting to cause serious bodily injury, but guilty of attempting to cause bodily injury. The significant portion I think is the jury's distinction between serious bodily injury and bodily injury because when we look at the statute, the statutory definition, serious bodily injury contains within it the language of the aggravating factor. Now, Mr. Talasnik

has taken issue with the words grave and substantial along the line, but even if we accept his definition that grave is a higher threshold than substantial, the jury has already acquitted him of this substantial, the easier burden of substantial. They have already found beyond a reasonable doubt as a fact that there was no intent, there was no purpose or knowledge to create a risk of death, a substantial risk of death, and on that basis, Judge, it is highly improper I think to now go back and tell them that they're going to find Mr. Highlander in effect guilty of the very same thing that they already acquitted him of, and that is purposely, knowingly creating a grave risk, a substantial risk of death. They only found him guilty of the bodily injury.

When we look at the bodily injury definition, there is no risk of death involved in that at all and so on that distinction I think the first aggravating factor would have to be dismissed. Mr. Talasnik.

MR. TALASNIK: Your Honor, I

suggest to the Court that there is a fundamental difference between attempting to prove that there was a specific act of attempted murder, which was not found, as opposed to evidence showing that the defendant purposely or knowingly in his conduct, vis-a-vis the killing of Gloria Simonelli, consciously or purposely or knowingly created a grave risk that death would result to Patrick Sullivan. The jury did find that the defendant took a shot at Patrick Sullivan. That is implicit or explicit by their convicting him of attempting to cause bodily injury as against Patrick Sullivan with a deadly weapon. The only evidence introduced during the trial about any deadly weapon was a handgun, the concept of that aggravating factor is addressed in State versus Price, 195 New Jersey Superior, beginning at page 285, a Middlesex County Law Division capital case decided in 1984. In that case the concept of the grave risk of death was discussed and there was an indication that the focus was upon the risk of death that was knowingly or

purposely created, not whether that risk was actually acted upon by taking a shot or attempting to murder some other person.

Some of the relevant considerations in whether there is evidence of a grave risk of death is, according to State versus Price, the type of weapon used and they specifically include as an example the use of a handgun, the fact that a gun, especially a handgun, is known to be capable of lethal use that with minor deviations in the manner in which it is used or pointed there is a grave risk of death whenever the person makes a conscious decision that notwithstanding the presence at the scene of persons other than the intended victim, he's going to go ahead and make use of this kind of a weapon, a weapon that is known to have the capacity of being used with lethal force.

Another factor to be considered is whether there is some other person within the "zone of danger," and that is a phrase referred to specifically by State versus Price and clearly in this case the evidence

is that Patrick Sullivan was within the known zone of danger because there was clearly testimony and evidence that at the time that Mr. Highlander emerged from the car and at the time that he emerged from the car with the gun and at the time that he approached Miss Simonelli and Mr. Sullivan with that gun, the two were six inches apart. Clearly that places Mr. Sullivan within the zone of danger, clearly that places in the hands of Mr. Highlander a handgun, an item that is known to be capable of lethal use, clearly it places within his hand, while the non-intended victim is within the zone of danger, the capacity to with minor deviations in the aiming of the gun cause death to some other person, clearly Mr. Highlander had to know that because he made a conscious decision to approach the two of them when they were in the same zone but six inches apart under circumstances where he would be completely unable to control where the bullets went once they were discharged and where Mr. Sullivan went after any of the shots were discharged.

There is the fact that more than one shot was used, which indicates a purpose to create this grave risk of danger because shots were fired after the intended victim was on the ground and the fact that the jury convicted the defendant of an aggravated assault, specifically shooting at Mr. Sullivan, makes manifest that it was Mr. Highlander's knowledge or purpose that a grave risk of death to Mr. Sullivan existed at the time of the commission of the crime.

There is, I suggest, a distinction, a meaningful distinction between the knowing and purposeful conduct of Mr. Highlander in the creation of a risk of death to Patrick Sullivan and that that is clearly distinguishable from the fact that the jury determined, based on Your Honor's charge, that there was no specific purpose to kill Mr. Sullivan by virtue of the shot that was fired at him.

For those reasons I suggest under State versus Price and under the standard with which we deal at this point that the aggravating factors should be

submitted to the jury so that they can make that distinction, so that they can make the determination as to whether the conduct of Mr. Highlander demonstrated that he knowingly or purposely created a grave risk of death to Patrick Sullivan as opposed to actually attempting to kill him.

MR. PRESTON: Judge, if Your Honor feels there's anything substantial in what Mr. Talasnik has said, I would like to be heard, but other than that I think that Price is clearly distinguished, that we're not talking about just an acquittal of attempted murder. We're talking about the acquittal of that serious bodily injury, so unless Your Honor has any questions about that --

THE COURT: I have no questions. The motion is denied. I am satisfied that the jury indeed found as suggested that the defendant fired a gun at Patrick Sullivan. I'm satisfied further that the jury decided that that was not a purposeful or knowing attempt to kill him. The jury further found that it was not a

purposeful or knowing attempt to inflict serious bodily injury, as serious bodily injury is defined in the law and as I have defined it to the jury. That is not, however, to be equated in my view with the question of the purposeful or knowing creation of a risk of death.

I am satisfied that the jury could well determine as a fact that there was a reasonable doubt about whether the defendant intended or purposely or knowingly attempted, rather, to inflict serious bodily injury while still reaching the determination that beyond a reasonable doubt the defendant purposely or knowingly created a risk of death. I don't think that the two terms are synonymous, I think there is a distinction. It is to be sure a careful distinction that needs to be made, but that is what I believe the process allows the jury to do. I am therefore satisfied that the motion to strike the aggravating factor should be denied and is denied.

MR. PRESTON: I have submitted to the Court a letter now dated June 26, 1989

in which I enumerated the objections to the proffer of the Prosecutor. I found that our discussions oh Thursday were singularly unhelpful in clarifying in my mind exactly what Mr. Talasnik was going to talk about and what he was not going to talk about. I found it all well and good that we could discuss areas, but what Mr. Talasnik would consider within those areas and what he would not consider within those areas out of the testimony is something that I was still unclear about. I took the opportunity to review those transcripts that I was able to obtain, and as Your Honor indicated that you would have to be provided with them, I did provide you with them.

THE COURT: I don't recall --

MR. PRESTON: I indicated in one of my options that that might be a process we had to go through and you indicated if that was the process I was going to have to go through, I would have to provide the transcripts and I've done that. Therefore I submit the letter to the Court. I ask it be marked and made part of the

record as my objections. If the Court is not inclined to do that, I'll be perfectly glad --

THE COURT: I'm not going to mark these as exhibits. I will acknowledge receipt of a letter from you today dated today and a stack of transcripts as I have already indicated.

MR. PRESTON: Judge, I want to do everything possible to insure that that letter becomes part of this record for all subsequent purposes. We've had some difficulty with things like this in the past, but not perhaps in this Court.

THE COURT: Not in this Court. The letter is a part of the Court's file and --

MR. PRESTON: We've been cautioned that those difficulties have arisen and I want to be sure that the record reflects that this is part of this record, that these objections are part of this record. I'll be glad to read them into the record.

THE COURT: If I understand you

correctly, we're going to discuss each one of these one by one.

MR. PRESTON: I've made the objections, stated in my letter the basis for the objections --

THE COURT: Mr. Talasnik, you've seen the objections?

MR. TALASNIK: Your Honor, I was served this morning with the three page list of objections by Mr. Preston and was provided by him this morning with several of the transcripts to which the objections refer. On Friday Mr. Preston communicated with me orally and indicated a list of specific objections to those transcripts which I had already acquired by virtue of the standing order with the Court Reporter that at any time that a --

THE COURT: Well, let's get started, Mr. Talasnik. I don't need a speech.

MR. TALASNIK: Your Honor, I don't understand the procedure. I was here Thursday afternoon and placed on the record a specific proffer as to specific witnesses and

areas of testimony. Your Honor struck certain of those areas and cautioned me as to the very limited sphere within which I could address certain portions of certain witness' testimony. I think that I understand that, I'm prepared to verify that with the Court today. Mr. Preston has been present throughout the entire trial, he has been in constant communication with Mr. Davis throughout the entire trial, I'm afraid I just don't understand the procedure now of getting entire transcripts of testimony and going line by line to delete certain references to things when it was never the State's intention to either recall the witness to testify to what was in the transcript or to offer any of the transcripts to the jury as evidence. The representation which I made to the Court back last Thursday afternoon at the Court's instruction was what areas of which witness' testimony the State would intend to rely upon inasmuch as the State represented that no additional witnesses would be called. I don't understand the necessity for this kind of a

procedure.

MR. PRESTON: I'd like the opportunity to explain the absolute necessity that Mr. Talasnik has placed upon me and it is simply this. I continue my previous objections that I made at the hearing on Thursday as to the testimony that was proffered by the State. That is first. Second, on Friday Mr. Talasnik has indicated that I have given him some of what he already had in terms of objections. Let the record clearly reflect that the objections noted in my letter are specifically the same as those that I gave to Mr. Talasnik and they include what I gave him up to -- that I had available to me on Friday, testimony of Jean Henderson, Jennifer Saitz, Robert Brooks, Michael Reed, Edward Chambers, Patrick Sullivan, Judy Bryars, all of that was available to me, and Tonya Martin, all of that was available to me on Friday, I gave it to Mr. Talasnik then. The transcripts of the other matters were not available to me on Friday, they were only available to me over the weekend and they include John Simonelli,

Gloria Simonelli, Rufus Duff, Timothy Mooney, Moishe Shinar, it is Shinar, we've agreed on that. The transcript is also a typo. Thank you. I have given that to Mr. Talasnik this morning, which is the first opportunity I had.

THE COURT: Educate me a little bit. Wait, Mr. Preston. I have picked at utter random, simply because that's where my pen landed, a particular citation. I want you to tell me what it is that you want me to do with respect to that. This happens to be Jean Henderson and it's page 24, lines five to eight. I attach no significance to that citation, but it's were where the pen landed.

MR. PRESTON: At the beginning I indicated that I object to the Prosecutor either arguing it to the jury or commenting on the material which is contained in that citation, and you had selected page 24, lines five through eight.

THE COURT: What was Gloria wearing that night.

MR. PRESTON: Yes, it's totally irrelevant.

THE COURT: I agree.

MR. PRESTON: What I'm saying that I did was that I was unable to discern from Mr. Talasnik the boundary lines that he was trying -- and there was no ruling by the Court that I could understand, but what was being done. When we rule, we rule on objections, we rule on a specific piece of testimony that comes from the witnesses' mouths. It's either in or out and we proceed. I had to reduce it to something that I was familiar with. What was happening on Thursday was so nebulous that I could not understand it.

THE COURT: All right.

MR. PRESTON: Mr. Talasnik raises one point which I think is critical. I was present throughout the whole trial, but it was Mr. Davis conducting the guilt phase, and what may be admissible for the guilt phase is not always admissible in the penalty phase and I've made the objections which are appropriate to the penalty phase.

THE COURT: How do you propose to proceed, Mr. Talasnik?

MR. TALASNIK: Your Honor, at the Court's direction on Thursday I made a proffer of which witnesses and which portions of their testimony I intended to rely upon. I'm prepared to do that again.

THE COURT: Okay, this time with a somewhat more narrow scope.

MR. TALASNIK: Keeping in mind the Court's instructions, yes, and understanding as I think I do the areas that I think are appropriate and relevant.

THE COURT: Let me hear the proffer.

MR. TALASNIK: With respect to the aggravating factor that the killing was committed for the purpose of escaping trial and punishment for another offense --

THE COURT: For housekeeping purposes I call that aggravating factor number two.

MR. TALASNIK: With respect to aggravating factor number two, the areas that I understand that I'm limited to are as follows. The fact of the assault against the victim, the fact that the assault gave rise

to criminal charges against the defendant, the victim's state of mind regarding her resolve to prosecute, the defendant's awareness of the existence of the charges, the defendant's awareness of her state of mind regarding her resolve to prosecute, the defendant's concern over going to jail over those charges and the defendant's decision to kill the victim as a result of those charges. Those are the only areas generically that I can address and in that regard with respect to the fact of the assault against the victim there would be the testimony of John Simonelli, of Gloria Simonelli, of Jean Henderson, of Investigator Rummler.

With respect to the fact that criminal charges arose, that would be the same individuals, John and Gloria Simonelli, Jean Henderson and Investigator Rummler. With respect to the victim's state of mind, regarding her resolve to prosecute, that would be the testimony of John and Gloria Simonelli, of Jean Henderson, of Investigator Rummler and of Terry McCabe.

With respect to the defendant's awareness of the charges, that would be the testimony of Gloria Simonelli, the testimony of Investigator Rummler, the testimony of Diane Pond, Jennifer Saitz, Robert Brooks, Michael Reed, Detective Mooney, Moishe Shinar, Rufus Duff. With respect to the defendant's awareness of the victim's state of mind, that would be the testimony of Gloria Simonelli, of Investigator Rummler, that would be it.

With respect to the defendant's concern over going to jail as a result of these charges, that would include the testimony of Diane Pond, of Jennifer Saitz, of Robert Brooks, of Michael Reed, of Detective Mooney, of Moishe Shinar, of Rufus Duff, that would be it. With respect to the defendant's determination to kill the victim over the charges, that would be the testimony of Jennifer Saitz, Robert Brooks, Michael Reed, Moishe Shinar and would also include testimony after the fact of the killing indicating that the defendant's decision to kill was as a result of the charges and that

would include the testimony of Judy Bryars, of Detective Lieutenant Welsh, Investigator Juliano, Special Agent Davis and Special Agent Clemens. That would complete the proffer with respect to what the Court has denominated as aggravating factor number two.

With respect to aggravating factor number one, it's my understanding from the Court's instructions that I am limited to the following types of facts. The fact of Sullivan's presence at the scene of the shooting, the fact of Sullivan's proximity to the principal, placing him within the zone of danger, the fact of the type of weapon selected, the fact of the approach and shooting of the victim and the number of shots, the fact that a shot was fired at Patrick Sullivan and any admissions that the defendant made regarding a purposeful shooting at Patrick Sullivan.

The evidence that would be offered in that regard would be the testimony of Jean Henderson and of Terry McCabe that Mr. Sullivan was physically present with the

victim prior to their leaving the bar, the testimony of Patrick Sullivan himself and the testimony of Tonya Martin with respect to the circumstances surrounding the approach of the defendant, how the shooting took place and the number of shots, the testimony of Doctor Jason, Bruce Harbison and Sergeant Hannigan solely with regard to the tracking, if you will, the number of shots and the fact that there was evidence consistent with one shot having hit the ground near where Mr. Sullivan was and the explosion of lead fragments in that general area, and finally evidence that Mr. [illegible]hlander indicated a purpose to shoot at Mr. Sullivan and that would include the testimony of Robert Brooks, of Michael Reed, of Mickey Chambers, also of Judy Bryars, of Lieutenant Welsh, Investigator Juliano, Special Agents Davis and Clemens, and I omitted this, but with respect to Mickey Chambers there would also be reference to that portion of his testimony where he described the defendant getting out of the car with the gun and approaching the two individuals and the fact that he heard three

shots and that that would be the extent of reference to testimonial evidence; that with respect to physical evidence the only item that would be offered is S-5 which is the document signed by the defendant constituting a three page statement --

THE COURT: Wait just a second.

MR. TALASNIK: S-16 through 26 inclusive, which were the scene photographs, S-36, the certified copy of the domestic violence complaint, S-37, certified copy of the indictment, S-38, manila envelope containing the lead fragments, S-41, folded copy of the domestic violence restraining order and S-44, the original assault complaint prepared the day after the incident and signed by the victim. That would be the extent of the physical evidence proferred in support of the two aggravating factors.

MR. PRESTON: I think one thing in particular points out exactly what I'm talking about. There was a discussion and I thought there was an agreement with Your Honor by Mr. Talasnik on Thursday, maybe I'm totally mistaken, that evidence of the

intention of the killing and evidence of premeditation which was divorced from the purpose of killing would not be introduced. In other words, evidence which only went to premeditation, evidence which didn't go to the aggravating factor, what the purpose was, would not be introduced. I ask the Court to turn to the transcript of Moishe Shinar which Mr. Talasnik referred to for several of these things and in my letter I indicate that in this entire transcript the only connection Mr. Shinar makes with the aggravating factor is perhaps on page sixteen, and look at exactly what he says. He says he was very upset. He was scared. He probably thought he would have to go to jail. Doesn't say the defendant said that to him, doesn't say that he had any basis for it. Said probably. It's a wild speculation by Shinar.

THE COURT: How about on page seventeen, lines eighteen through eleven and one through three?

MR. PRESTON: That particular portion is relevant, but the rest of the transcript is not.

THE COURT: Well, I'm inclined to agree, frankly, although I haven't read the rest. I recall most of what Mr. Shinar testified to. The whole thing about cashing a check, for instance, is completely irrelevant.

MR. PRESTON: I just don't know where Mr. Talasnik is drawing the line here. We are talking about areas. I don't know what he considers to be within that area and what is not within that area and how one little element may be relevant because something else is there. It's completely out of context.

THE COURT: He has identified Mr. Shinar in two subject areas if I'm correct. One, to establish that the defendant was aware of the fact of the charges and -- three subject areas, second, that he was concerned about going to jail with respect to those charges and three, that his decision to kill her was related to this concern about going to jail. On the last, Mr. Talasnik, what is it that you proffer about Mr. Shinar's testimony in that

respect?

MR. TALASNIK: Your Honor, I received the transcript of his testimony this morning. I was relying upon my trial notes and my recollection that there was discussion in those three areas.

THE COURT: Oh, here, page sixteen, Mr. Shinar says, Mr. Preston, that the slang he used to say I will beat her, I will kill her, but that's the way he was talking about anyone or everyone so I never took it as serious, saying that he would really kill or something like that. Question, although you didn't take it seriously, he did say he was thinking of killing her? Answer, he did say it. Question, did he say it more than once? Answer, I can't remember. He said it probably a couple of times.

MR. PRESTON: I don't see the connection. The problem is making the connection between the intent to kill. If he said he'd kill her and in some other place he said he knew of the charges, where is the connection? Mr. Shinar's testimony, where is

the connection? We're talking about fragmented evidence out of context here and that's my whole problem. I don't know how much is going to be fragmented where. I've made the objections that I've made as best I can. I can't say any more than I've already said.

THE COURT: I understand. I think the answer is that Mr. Talasnik should be limited to the subject areas that he has described. I in my own view believe that all of the subject areas that he has described are within the proper ambit of relevance with respect to the two aggravating factors. What's your technique? How do you propose to adduce this testimony?

MR. TALASNIK: Your Honor, what I had intended to do so was in the context of an opening statement, if you will, to the jury to refer them back to those portions of those witness' testimony which they heard in the first phase of the trial, which have relevance to and also pertain to the two aggravating factors and at the conclusion --

THE COURT: How to do that?

Are you going to refer, whether in your opening or your proffer to the jury, are you going to use pages and lines from transcripts?

MR. TALASNIK: No, I was referring them, without reference to transcripts, to portions of the testimony of certain witnesses which they heard in phase one which are relevant to phase two and then I was prepared to rest.

THE COURT: Okay.

MR. PRESTON: In that respect if he refers to a portion of the testimony and he says, you'll remember that so and so said this, and it happens to appear in a portion of the transcript that's objectionable, he could do that.

THE COURT: You're right, but I haven't heard anything about his proffer this morning except for a couple of exhibits that I want to talk about in a minute, talking now about testimonial evidence, I haven't heard anything in his proffer this morning that I think as a subject area is irrelevant.

MR. PRESTON: Let me put it

this way. I am not and I don't think I should be put in a position of having to jump up every five minutes to object to what Mr. Talasnik might or might not say in his opening in terms of what section was objectionable and what section was not. That's why I've taken it this way. I've given Mr. Talasnik as much notice as I can as to what I consider objectionable and I'll rely on that as being my objections during his opening, if his opening is the proffer to the jury of the evidence that he's relying on.

THE COURT: I think you're right, but I don't think we have a problem. I think by reason of what you did on Thursday and what you have done this morning, I think that the process has resulted in a narrowing of the focus, appropriate narrowing of the focus so that the proffer that Mr. Talasnik has made this morning, again I haven't talked about exhibits yet, but the proffer of the testimonial evidence that he has made this morning in my view is a far more appropriate, relevant position than what he started with

on Thursday, so I think you succeeded. I just don't think it needs at this stage, given that he"s not going to offer line by line testimony, that he needs to go through line by line of your letter. I have the letter here. I'm not going to suggest any specific ruling on any line of testimony. If Mr. Talasnik intends at any point to refer to any line of testimony that I'll tell you now that is within the letter that Mr. Preston has described, I'm to be notified before you present it to the jury. That way I can make a ruling so you don't have to object and the bell has to be unrung after the jury has heard it.

You have Mr. Preston's letter. It gives you what he considers to be lines of testimony that are off limits. Before you refer to anything in the letter to the jury, you're to address it to my attention. Now let's talk about exhibits. S-5 is the three page statement given to the FBI. My recollection is that when I looked at that the other day when we talked about it, I think I said the only thing I could think of

that was relevant was the last couple of paragraphs, bottom of page two, top of page three or something, but I don't have it in front of me.

MR. PRESTON: I am a high school graduate with twelve years --

THE COURT: That wouldn't be it. I don't have the statement, but that doesn't strike me as what I have in mind. Do you mind letting me see a copy of it? My recollection is when I looked at it the other day I found very little in it that was useful here. There's a statement in here, I then ran towards the car, drew a bead on the guy she was with and took a shot at him. I know what I had in mind the other day, last paragraph, page three, before the part he added. I would like to add that I was driven to do what I did by the Prosecutor's Office for indicting me for minor offenses, then pushing it up to greater offenses to violate my probation. I would perceive that the two statements I just read out of the statement are the only ones that in my view have any relevance to the issue here.

MR. TALASNIK: I'll agree then to withdraw the exhibit as an exhibit and to the extent that I refer to it will refer only to those two sentences.

MR. PRESTON: I don't know that that's necessarily true. Insofar as the Prosecutor is proffering the statement, attempting to proffer that the principal motivation was to prevent her testimony, there were also considerable emotions on the part of Mr. Highlander, and therefore the last paragraph that he had added specifically would seem to at least weaken or mitigate.

THE COURT: And therefore you may certainly adduce the jury's attention or draw their attention to that. None of this is designed to limit that which you may produce, Mr. Preston.

MR. PRESTON: No, the only thing I was questioning is what was being done with respect to the document itself, if it was being redacted and submitted to the jury.

THE COURT: No, the jury has already received the document. What I'm

going to do is direct that Mr. Talasnik as part of his presentation will not offer the document. He may if he chooses address to the jury's attention those two parts of the document and you may offer either the document itself or any other part that you think is appropriate.

MR. PRESTON: That's fine, that's acceptable, no problem.

THE COURT: However, how about the various photographs of the scene, 16 through 26?

MR. PRESTON: Who has those?

THE COURT: They're in chambers. All right, we'll skip the photographs for the moment. The certified copy of the domestic violence documents.

MR. PRESTON: I don't think they're relevant. I think the fact of the aggravated assault is relevant and it could violate his probation, but the domestic violence documents carry no jail penalty by themselves. The only thing that would result in jail is if he violated them, so we're saying that he intended to do something to

avoid going to jail, the only thing which would put him in jail would be violating it.

THE COURT: I understand that argument and you're right as far as it goes. I think, however, that there's some relevance to these documents and I infer nothing for the moment about S-41, leaving that for another issue. I'm satisfied that S-36 has relevance insofar as it may be considered as bearing on her determination to pursue charges as a result of the incident and as a result of his awareness of that determination.

MR. PRESTON: I want to make sure that I renewed the objections that I made yesterday with respect to that relevance arguments as to her intentions to pursue.

THE COURT: I didn't get the impression that you were withdrawing any objection, Mr. Preston.

MR. PRESTON: I didn't want to suggest that I had either.

THE COURT: S-37 is the indictment from the assault.

MR. PRESTON: There's no

objection to that, Judge.

THE COURT: S-38 are the bullets. I think we talked about separating the parts of the bullet that came from the body and the parts that did not.

MR. PRESTON: That's correct, Judge.

THE COURT: What do you have on the parts that did not?

MR. PRESTON: Oh, the parts that did not come from her body? I don't think that any kind of foundation was made that they should be submitted to the jury hearing this penalty phase. There was indication that there was pieces of lead found at various locations. There was an indication that there was a mark found on the parking lot. There was no indication as to what time or any way the jury or any witness could testify as to what time or when those things were found there, when the mark was found there in relevance to the acts which are at hand. There was no indication that those fragments and the testimony has been that they could not even say they came from

the gun or were of the same character as found in the victim of the murder. The connection if at all with the shooting that took place on that day are so tenuous I would suggest as to make those scene photographs showing the bullets and also the lead fragments themselves would make them inadmissible even if they were bullets.

MR. TALASNIK: I believe what Mr. Preston is doing is addressing the issue of weight as opposed to admissiblity. If you add together Doctor Jason, Officer Harbison and Mr. Hannigan, there was testimony from which a reasonable jury could conclude that there was evidence that the indentation in the ground --

THE COURT: How about the two bullets that come from her?

MR. TALASNIK: I'll withdraw that.

MR. PRESTON: The only thing I can say is that evidence that he's talking about from Harbison and -- the only evidence is not that the jury could conclude. The jury could speculate on that. There's

nothing to tie it time wise to the murder or even to say physical wise in terms of this was the same gun and same type of bullet. Before you get to credibility there is a threshold of relevance and I'm saying that has not been met.

THE COURT: I'm satisfied that there was sufficient relevant evidence to allow the jury to make the tie in, testimony of a fresh mark on the asphalt and the bullet, the fragments were identified I think by Hannigan as bullet fragments. I will permit 38 to the extent that it does not include the two fragments identified as having been taken from Gloria Simonelli. S-44 is the original copy of the assault complaint, the municipal summons, Mr. Preston.

MR. PRESTON: Judge, I'm just reviewing the photographs.

THE COURT: S-44 is the original of the -- copy of the original assault complaint, the summons in the Margate Court.

MR. PRESTON: The assault

complaint is redundant. The indictment is in. I maintain my same objection that it's the facts of the complaint and not anything that has to do with her intent or any of that other stuff.

THE COURT: The complaint may be received as evidential of her intent and his awareness of it. That leaves us with the scene pictures and S-41. Let's do the scene first.

MR. PRESTON: As to the scene pictures, I see three which purport to show the location of lead fragments. I object to them on the same basis that I made my objection to the lead fragments. Your Honor I believe has already ruled with respect to that.

THE COURT: Do you want to refer to them by number?

MR. PRESTON: S-26, 21 and 25.

THE COURT: Okay.

MR. PRESTON: They are such close up photos that they don't show the scene, they don't show the disposition of the location or anything and that could be their

only purpose, and so I object to it on that ground. There's no other purpose, there's no other reason besides the objectionable reason. S-17 purports to show a location with a chalk outline of a body and a purse. S-23 is the same, S-22 the same, S-20 the same, S-18 the same.

THE COURT: May we have those.

MR. PRESTON: I was going to address them as I was going through them. I'm dividing them up into two categories of objection that I'm going to make. The other photographs -- excuse me, also S-19. There are two remaining photographs, S-16 and S-24 that I submit to the Court have no relevance at all. They don't show the location of anything. One is the picture of the front of the building which is relevant to nothing in the penalty phase, the other is a picture of the back of her car which is relevant to nothing in the penalty phase. I object to those two.

With respect to the remaining ones that show the chalk mark and the purse, they merely show and the pictures merely can

indicate the location at which the event took place. What's relevant here in terms of -- the location of where it took place has nothing to do with aggravating factor number two, preventing her testimony. It doesn't matter where, how she was standing, where anybody was standing.

As to the factor number one, the grave risk, there's nothing in any of those photos which can help the jury in anyway understand the proximity, if that's the standard that the Prosecutor is using, the zone of danger standard, there's no indication in any way that they can show the proximity of Mr. Sullivan to the victim. It shows where he was when she was shot. That's irrelevant to aggravating factor number one. If there was something in there that showed the proximity of Mr. Sullivan, well, that would be a different story. That's the end of my objections, Judge.

THE COURT: Okay, the proffer, Mr. Talasnik, of the following pictures will be denied. S-16, 17, 19, 22 and 24.

MR. TALASNIK: Your Honor,

could I see the ones --

THE COURT: Yes, just a second and I'll tell you why, 16, 17, 19, 22 and 24. Before I explain why I'm going to exclude those, let me tell you what I'm going to include and why the difference. The proffer that will be permitted are the following. Three pictures first of the fragments, which are 21, 25 and 26, may all be received. One of them, specifically S-26, is in my view incomprehensible by itself. The way I understand what that picture shows me is to look at S-18, which shows a view essentially from the front of the Simonelli vehicle, which I conclude by looking at S-23, which if you put it all together, these two pictures taken from different angles show where the car was, where the car was in proximity to where she was and where they were in proximity to where the bullet fragment wound up, so all of those pictures will be received for those reasons. S-20 is received in evidence because I am satisfied it may be taken in concert with the testimony of the woman, I forget her name, but whoever

it was that was standing daydreaming in the kitchen when she testified she saw the shooting, her testimony is going to be relevant here and therefore her ability to make observations is relevant.

MR. PRESTON: May I see S-20? Thank you.

THE COURT: That which you may use, Mr. Talasnik, are in sequence S-18, 20, 21, 23, 25 and 26.

MR. TALASNIK: What I've been shown are the ones that are in. I'd kind of like to see the ones that were struck.

THE COURT: Okay. We'll keep them separate. They're all in evidence for the trial.

MR. TALASNIK: The only one of the group excluded that I have a question about is S-17, the reason being that what S-17 depicts is the chalked outline which Tonya Martin indicated that we had backwards, which shows where approximately Ms. Simonelli was at the time of the shooting and the relationship of that location to the spray, if you will, of the lead fragments directly

behind and to the left.

THE COURT: In my view the combination of pictures that are in give you that, specifically two pictures, eighteen and twenty accomplish that same purpose. That was exactly my theory. If you look at these two pictures taken together, they show the exact same thing.

MR. TALASNIK: Very well, that's the only picture that I had a question about because I thought it did fairly well enable the jury to picture that.

THE COURT: Okay. Mr. Preston, I'm going to keep for my file your letter of today. I'm going to return to you for your file the copies of the transcripts.

MR. PRESTON: Judge, I have the transcripts.

THE COURT: You may have more need of them later than I do.

MR. PRESTON: I just want to make sure the letter has something which it can refer to.

THE COURT: Well, I'm going to keep your letter and as I indicated make it a

part of my file. All right, Mr. Preston, you may proceed.

MR. PRESTON: Last issue, Judge, that is with regard to your opening charge. I made my objections and noted them before.

MR. TALASNIK: There's a piece of evidence that he didn't address.

THE COURT: Indeed there is. I had addressed it in my mind, but that's S-41, which is a copy of the domestic violence documents.

MR. PRESTON: I've already made my objections with respect to that and I maintain those objections.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, as I indicated I believe last week when the issue was addressed, the relevance I suggest is to show the continuing resolve of the victim to prosecute the matter.

THE COURT: I think that they tend to show more her fear and her concern. I don't think they have a sufficiently direct relationship to her intent to prosecute and

given the other documents that are already in I'm going to exclude S-41. Mr. Preston.

MR. PRESTON: One last matter with respect to the opening charge. I had already noted my objections at a prior time when we discussed it and that I had wanted the charge that I proposed given and making objections to the differences between your charge and my charge and what was mutually exclusive and I still maintain all those objections.

However, one issue I think may have been discussed in chambers and perhaps not set forth on the record and I want to make sure that that's there and that's what I will refer to as the Zola issue. In State versus Zola, the Supreme Court was faced with a proposition by the defense that if the State did not counter, if there was no contradictory evidence, mitigating factors, than what the Court could do is have a directed verdict as to that mitigating factor, that these mitigating factors were somehow factual or mechanical perhaps. I mean it depends on whose side you're on as so

what you want to label it, but there was the idea that there could be a directed verdict as to a mitigating circumstance.

In Zola, 112 New Jersey, the Supreme Court said that that was not the case, there was no directed verdict and they say the jury's determination of whether matters in evidence constitute mitigating factors is the result of a qualitative judgment, and for that reason there is no directed verdict with respect to mitigating factors.

What I argue to the Court is that that language indicates that with respect to all factors, not just mitigating factors, there is a qualitative judgment. It is easy enough to say there was a robbery or there was not a robbery. It is easy enough to say in some respects that there was money paid or there was not money paid, but I think that over simplifies the issue because what the jury has to decide is indeed many questions within the aggravating factors all by themselves of a qualitative nature. We can define the word grave until hell freezes

over and it's still a qualitative judgment for the jury. We can define a number of these aggravating factors, pecuniary value, what is and how much is really pecuniary value, that's a question of value as to that. All of these things that are present in mitigating factors are also present in the aggravating factors to a greater or lesser extent. What I think the Supreme Court is focusing on, though, is their original theme that pervades every decision that they've made and that is when the jury is deciding and making their decision, there is no need for them to explicitly perhaps state that death is the fitting and appropriate punishment. They don't need to do it because in every step of the proceeding, each step is infused with the backdrop, with the thought that while we are doing it we are deciding whether death is the fitting and appropriate punishment. It isn't just something that gets thrown in as an afterthought at the end. The whole process is infused with it.

If the whole process is infused with it, I think we can better understand

what guided discretion is really all about. Guided discretion is not just a mechanical application of the statute with some qualitative thought thrown in at the end. Guided discretion as compared to our prior murder statutes involves this distinction. In the prior murder statutes the qualitative judgment was rampant, totally dominated the decision the jury would make. There was no objective factor that focused into it that chanelled the jury's thinking, and I think the word here that the cases have used and that I use here, channel, is the appropriate word. They don't put handcuffs on, they don't force the decision, they channel, they guide and what the legislature has done by the creation of aggravating factors has created channels, created guidance, created categories in which the death penalty may or may not be appropriate.

I think that the statute recognizes, I think that our cases recognize that even in a situation in which the jury finds the factual existence of facts that technically fulfill an aggravating factor,

that there still might be, despite the absence of any mitigating factors, the situation in which the jury would find, in which even the legislators who made the statute would find, that death is not the fitting and appropriate punishment.

THE COURT: Is this leading anywhere?

MR. PRESTON: Yes, Judge, leading to the idea that I think that the charge should include the instruction that the aggravating factor, to find that, should include a qualitative judgment, and I hadn't raised that specific issue.

THE COURT: Are you talking about the opening charge or closing charge?

MR. PRESTON: The opening charge and the closing charge should contain that focus. Thank you.

THE COURT: As to the opening charge the application is denied. That is a very brief overview of a trial indicating fundamental concepts. As to the closing charge, substantively I agree with everything you've said. The manner of the presentation

we can discuss. No question but that the substance which you indicated will be included in the final charge as I have already proffered a version to you. We can discuss whether you think my version is adequate or not, but substantively I don't agree.

MR. PRESTON: I don't want to belabor the record, but I want to make sure that the points that we covered in our discussions in chambers are on the record. The last application that I make is that Mr. Highlander has made a request of me concerning his presence in the courtroom and I've had a chance to talk to him about that. I've had a chance to explain to him that it's his right to be here, that in his best interest, I can't imagine him being helped by not being here, but that decision is ultimately one for him to make. If he is insistent upon it, I told him that I would make the application to the Court.

He is insistent upon it, he does not wish to be present for these proceedings before the jury, he wishes to

return to the county jail this afternoon and to remain there. I understand that he is required to be here for the presentation of the verdict and the Court can and should bring him back to do that, but he wants to remain in the county jail for these proceedings and not to be present in Court and I informed him if that was his earnest desire, I'd make that application for him.

THE COURT: Mr. Highlander -- well, Mr. Talasnik, do you have anything you want to say?

MR. TALASNIK: Your Honor, the interest of the State is limited to the integrity of the proceedings. I'm satisfied the Court can deal with that.

THE COURT: Mr. Highlander, you've heard what Mr. Preston has just had to say.

THE WITNESS: Yes, sir, Your Honor.

THE COURT: Has he correctly articulated your desire in the matter?

THE WITNESS: Yes, sir, he has.

THE COURT: Okay, let me ask

you a couple of questions then, Mr. Highlander, and then I'll see where it goes. You understand first that regardless of whether you are present during the course of these proceedings or not, that you would be required to be present at such time after the jury goes out and at any time until they return a verdict, do you understand that?

THE WITNESS: Yes, sir, Your Honor.

THE COURT: And you would be required to be here when the verdict was returned?

THE WITNESS: I understand that.

THE COURT: You also understand that you have an absolute right to be here at any proceeding and that no one, neither your lawyer nor the Judge nor the sheriff nor anybody else, can interfere in any way with your right to be here, do you understand that?

THE WITNESS: Yes, sir, Your Honor.

THE COURT: You also understand

that it is apparently your lawyer's advice that you do remain here, do you understand that?

THE WITNESS: Yes, sir.

THE COURT: I will also tell you, although I am not in an appropriate position to give you any advice, I don't want it to sound like I'm giving you any advice, it is my view that it is very much in your best interests that you be here during the proceeding, do you understand that?

THE WITNESS: Yes, sir.

THE COURT: You had a complete opportunity to discuss this matter with counsel?

THE WITNESS: Yes, I have.

THE COURT: You've had a complete opportunity to give the matter consideration?

THE WITNESS: Yes, sir.

THE COURT: You now with those opportunities have heard everything that has happened here this morning. Is it still your desire that I permit you not to appear until the verdict part of these proceedings?

THE WITNESS: That's what I wish to do, Your Honor.

THE COURT: All right. I'm going frankly to give that matter some consideration. I probably am going to grant that application, but I want to frankly sleep on it for a few minutes. It's 12:15. What I propose to do is bring the jury in now, they've been here since 10:30, just to indicate to them that we haven't forgotten them, excuse them for lunch, tell them we will commence by 1:30. By 1:30 I will have made and shared with you a determination of my ruling as to whether Mr. Highlander must be present or not. In the meantime I would request that he remain right where he is for the very few minutes that the jury will be in the courtroom now. Anything further then before we bring the jury in and recess?

MR. TALASNIK: I have nothing further.

THE COURT: With respect to the media, two points. Number one, under no circumstances are any pictures to be taken of any juror, and number two, I don't know

whether you have any audio equipment other than that which is associated with television cameras, any tape recorders or anything like that, that's not to be permitted except upon application. Please also be sure that you don't get too close to any of the jurors' chairs.

MR. PRESTON: Judge, I have a problem with my sore throat. Would the Court be offended if I had a losenge occasionally?

THE COURT: Not at all. For the record the alternates will, when they're all in the courtroom, all sixteen members of the jury will sit in the sixteen seats that they occupied during the first phase of the trial. However, during recesses I've arranged for a separate room for the alternates during the second phase.

(Jury returned to the courtroom).

THE COURT: Ladies and gentlemen, good morning. Hope you had a pleasant weekend and I'm sorry for the delay this morning which you may attribute solely to my miscalculation of how long it would

take us this morning to get our act together. I guess the last time I saw you was Wednesday and I had then told you to be in on Friday. I hope and assume and I've been advised that the sheriff's department reached out for all of you on Thursday to cancel Friday and ask you to be in this morning. You should understand that as I told you on Wednesday, when we got together on Thursday to discuss the matter it was my view that the most effective way was to start today rather than to start on Friday and have it carried over the weekend, so please if any of you are distressed about that, blame it on me, not on anybody else.

With respect to this morning, again I thought we would have less to talk about than we did. We have completed our discussions. We are ready for you at this time. However, given that it's 20 after 12, I just brought you in here now to tell you we were ready and to excuse you for lunch and that we will start promptly after lunch. It is my expectation for your own time budgeting purposes that you should budget today and

tomorrow and Wednesday. We may not need all of that time, but again for your planning purposes you should not make any other plans for those days. I think after Wednesday you probably are pretty safe.

During the course of this phase of the proceedings when you are in the courtroom you will all be together as you are now. However, during the recesses, if there are, any I'm going to ask the alternates to remain together in a separate room we will have for you and then we'll see where we go at the end of the proceedings, but certainly everything that happens with respect to this phase, all sixteen of you will be here together and will hear and evaluate everything. Okay, have a nice lunch, see you back here at 1:30.

(Jury leaves the courtroom).

THE COURT: Okay, everything having been addressed at our recess, when we come back from our recess I will address -- by then I will have addressed the question of Mr. Highlander's presence and whether he's here or not we will proceed immediately with

my preliminary remarks to the jury as outlined to you and then with opening statements, ahd then I gather at some point in the afternoon, Mr. Preston, we would move to your presentation of evidence. If you need the assistance of the sheriff with respect to the video equipment, if you'll let them know as soon as possible we'll get that up here.

MR. DAVIS: I'll find out at lunchtime. They should be here.

(Whereupon a luncheon recess is taken).

THE COURT: Gentlemen, one thing before we proceed with the issue I left open this morning. Mr. Preston, I gave you less than all of the response I had planned to give you on the motion that you made that I already decided and I wanted to add for the record another thought. Having frankly anticipated your motion, having given it some thought ahead of time, I was in too quick -- too much of a hurry to decide it, I forgot to articulate one of the reasons. This has to do with your motion to strike the aggravating

factor.

It occurs to me in my analysis that the charge that the jury acquitted him of in the aggravated assault is a charge that indicates purposeful conduct in that an attempt is by definition an act undertaken with a specific purpose, and that is how I charged it and that is in my understanding what it involved. The act that is charged in the aggravating factor here involves purposeful or knowing conduct, so that even if, which I do not accept, the underlying acts are the same, that is the attempt to inflict serious bodily injury or the creation of a substantial risk of death, even if those terms are considered synonomous, which as I indicated before I do not agree here, the attempt is a purposeful act. The aggravating factor indicates purposeful or knowing conduct, and therefore the jury could find that as well. For that reason and the others, the motion is denied.

On the last issue, I have given consideration to Mr. Highlander's request and as I indicated before lunch I am of the view

that it is in his best interest to be here, but that also he has the right if he chooses not to be here if he makes that determination voluntarily and knowledgeably and after the opportunity to consider it and discuss it with counsel, which I am satisfied that he has done.

One last question before I excuse him and before I ask him for the last time if he still wants to do that, and the question becomes what if anything is said to the jury? As I understand it there certainly are two options. One is to say nothing at this point or at any point in these proceedings. The second option is to say something now; the third option is to say something later. In either event, as between options two and three it's my view if a remark is to be made, it's to the effect that the defendant, with the Court's permission, has chosen not to attend this portion of the proceedings and that the jury is to attach no consideration to that fact and to draw no inference of any kind from it. That would be the substance of a remark that I would make.

Mr. Preston, I'd like to you discuss with Mr. Highlander the three options, which are to say nothing, to say something which I've indicated just now and to say something of what I've just indicated in the closing charge of the penalty phase of the trial. I would like to know what the defendant's preference would be among those three after he has had the opportunity to discuss it with you.

MR. PRESTON: May I have a moment, Judge?

THE COURT: You may.

(Mr. Preston and Mr. Davis conferred with the defendant).

THE COURT: The record will reflect that the defendant is conferring with Mr. Davis and Mr. Preston.

MR. PRESTON: Judge, the options wherein you give the jury at the beginning of the proceedings the status of Mr. Highlander's decision and instruction as to their drawing no inferences and I believe you also indicated his option to return at any part of the proceedings that he desired,

perhaps that ought to be reviewed.

THE COURT: With the jury or with him?

MR. PRESTON: No, first one was with the jury and the second one pertains to his decision to return.

THE COURT: I intend to discuss that again, but the instruction I would give to the jury, that is it is his choice to have me do that now and essentially as I've outlined it?

MR. DAVIS: Yes.

MR. PRESTON: Yes.

THE COURT: Mr. Highlander, you heard all that?

THE WITNESS: Yes, sir, Your Honor.

THE COURT: It's your request that I instruct the jury now as we just described?

THE WITNESS: Yes, sir.

THE COURT: You also understand that at any time between now and when I will send for you, you have the absolute right to be here and if it -- if you should reach the

decision that you wish to change your mind you have a right to do so and I will honor that immediately, do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Do you also understand that again it is my recommendation that it is in your interest to be here during all proceedings?

THE WITNESS: Yes, Your Honor, I understand.

THE COURT: Understanding all of that, is it your final decision that you still wish to not be present during this part of the proceeding?

THE WITNESS: Yes, sir.

THE COURT: Okay, satisfied as I am that the decision has been taken by Mr. Highlander of his own volition and with the advice of counsel and with his having attended to the Court's recommendation that he be here, I am satisfied to grant his application not to be until I send for him or until he changes his mind, whichever first occurs. I will send for you, Mr. Highlander, when the jury is sent out to deliberate so

that you will be here in the courthouse during the period of their deliberations, and again if you should at any point request to be here, sheriff, please see to it that the warden is advised of the situation and alerted to the notion that I am to be advised immediately by the warden in the event that the defendant wishes to return. All right, thank you very much.

(Defendant leaves courtroom).

THE COURT: All right. Counsel have anything further before we proceed?

MR. TALASNIK: No, thank you, Your Honor.

THE COURT: All right, while we're waiting for the sheriff, let me go through so that our records are clear, the exhibits that have been proffered and received in evidence for the penalty phase are as follows; S-18, 20, 21, 23, 25 and 26, photographs, S-36, which are the domestic violence orders, S-37 which is a copy of the indictment, the four fragment parts of S-38, and S-44 which is the copy -- is the assault complaint, those are the exhibits that are in

evidence at this point for the penalty phase of the proceedings to which appropriate reference by counsel may in fact be made. In fact I guess it would be appropriate for me to identify those for the jury at the outset as they are indeed in evidence.

MR. PRESTON: I think not, Judge. I think in the process of your identifying that they are in evidence, that the jury will either be informed of such by plain number, which will be meaningless, or will be by number with a description, and I think that that would be inappropriate. I think that any description or any comment on the evidence should come from the Prosecutor to the extent that he chooses to make it. The mere fact that they're submitted to the jury room means that they're in evidence, that's all we need.

THE COURT: I'm not sure I agree ultimately. I'm not sure that it ought to be done at this point and I won't do it now. At some point it's necessary in my view to explain to the jury what they may consider.

(Jury returned to the courtroom).

THE COURT: Ladies and gentlemen, with my permission the defendant has chosen not to be present during this phase of the proceedings. I instruct you that you are to draw no inference of any kind from that, nor should the fact that he is not present enter into your deliberations or your discussions.

Ladies and gentlemen, as you will recall I explained to you at the beginning of this case that if you decided that the defendant Richard Highlander purposely or knowingly committed the murder of Gloria Simonelli by his own conduct, you would then be required to determine the fitting and appropriate penalty for that crime. Now that your verdict has been received and you have found the defendant guilty of that charge, we turn to what is called the penalty phase of the trial during which you will decide whether the death penalty is the fitting and appropriate sentence or whether the defendant must be

imprisoned for a term of years to be set by me of not less than 30 years and up to life imprisonment,' and in any event with no parole eligibility for 30 years.

Our law has established a procedure for you to follow in making your decision and you may recall that I gave you a general outline of this procedure at the beginning of the case. I will now remind you of how this part of the trial is structured and what you can expect to hear. At the end of this phase of the case I will again instruct you as to all of the necessary details you will need to reach your decision.

The State has asserted that the death penalty is the fitting and appropriate sentence in this case. In support of this position the State seeks to have you find beyond a reasonable doubt that there are twelve aggravating factors present in this matter that support the imposition of the death penalty. As you will remember the law defines an aggravating factor as a factor or circumstance that may tend to increase the

severity of the punishment that would otherwise be appropriate. The law specifies the particular circumstances that may be considered as aggravating factors and only those factors outlined in the statute may be considered.

In this case the State relies on two provisions of the statute; first that in the commission of the murder the defendant purposely or knowingly created a grave risk of death to Patrick Sullivan, and second, that the murder was committed for the purpose of escaping trial or punishment for another offense committed by the defendant. You will determine from all of the evidence that which you have already heard upon which the State will rely and any other evidence that may be presented in this phase of the trial, whether the State has proven either or both of those aggravating factors beyond a reasonable doubt.

Your determination as to aggravating factors must be made unanimously. If you do not unanimously decide that one or both of these aggravating

factors have been established beyond a reasonable doubt, the death penalty cannot be imposed and I will decide the appropriate term of imprisonment within the limits I have described. If you do unanimously agree as to the existence of one or both of the aggravating factors, you will then decide whether there is evidence of any mitigating factors that should be considered.

The law defines a mitigating factor as a fact or circumstance that may tend to decrease the severity of the punishment which would otherwise be appropriate and which may be considered as a reason that would lead you to believe that compassion or mercy might be appropriate in this case. The law specifies the particular circumstances that a jury shall consider as mitigating factors and also directs the jury to consider in mitigation any evidence in the trial relevant to the defendant's character or record or to the circumstances of the offense.

In this case the defendant asserts as mitigating factors evidence

concerning the defendant's emotional and mental states and his physical condition, both at the time of the commission of the murder and at other pertinent times in his life. You should evaluate in addition any evidence in the case that you consider favorable to the defendant or about his background or concerning the circumstances of the offense that may lead you to conclude that the death penalty is not the fitting and appropriate punishment in this case. You should understand that these mitigating factors are not offered to show that what the defendant did was right or that you should approve of it or that you should excuse it, but rather they are offered as reasons for you to conclude that the death penalty is not the fitting and appropriate sentence in this case. A defendant does not have to prove the existence of mitigating factors beyond a reasonable doubt, nor need the jury be unanimous on this point. I will explain later exactly how the jury considers this question.

If you should decide that there

are both aggravating and mitigating factors present, it will then be your obligation to weigh and balance those factors to determine beyond a reasonable doubt whether the aggravating factors outweigh the mitigating factors and that therefore the death penalty is the fitting and appropriate punishment in this case. If you unanimously decide that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt, then I must sentence the defendant to death. Otherwise I must sentence him to a term of imprisonment within the limits I have described.

With this outline I will now invite Mr. Talasnik and Mr. Preston to speak with you and to discuss their respective points of view on this question. Then each side may introduce whatever evidence is relevant to the issue, after which they will present their final arguments and I will complete my legal instructions to you. Please listen carefully to everything and remember to keep an open mind and reach no conclusions until you have heard all that you

need to hear. Mr. Talasnik.

MR. TALASNIK: Thank you, Your Honor, may it please the Court, Mr. Preston, Mr. Davis, ladies and gentlemen, when last we met you were given an opportunity to review all of the evidence that was presented in this case, evidence from the mouths of the witnesses, pieces of physical evidence that was given to you to look at in the jury room. After reviewing all of that evidence you determined beyond a reasonable doubt that Richard Highlander was guilty of the purposeful murder of Gloria Simonelli or of the knowing murder by his own conduct of Gloria Simonelli, and based upon that same evidence you also determined that in seeking Gloria Simonelli out and committing the crime of murder against her, that he did so in violation of the provisions of a domestic violence restraining order that she had obtained in a vain effort to prevent just such a thing from happening, and you further determined that at the same time that the life of Gloria Simonelli was taken, that the defendant took a shot at Patrick Sullivan and

you found that he was guilty of aggravated assault in that he attempted to cause injury to Patrick Sullivan with that same deadly weapon, the handgun that was used to kill Gloria Simonelli.

That same evidence that you considered on the questions of guilt or innocence I suggest to you also suggests the two aggravating factors that have been described for you briefly by the Court, two aggravating factors that have been determined by the legislature as appropriate circumstances for you to consider in deciding whether in this case and for this defendant death is the fitting and appropriate penalty.

One of those aggravating factors is that the purpose, the prime reason for the killing of Gloria Simonelli was the decision by the defendant that it was necessary to prevent her from testifying against him in another court proceeding, specifically that the killing was to silence her with respect to the aggravated assault complaint that she had caused to be filed

against him on the 16th of March.

Now, ladies and gentlemen, I suggest to you that you have already heard all of the evidence that you need to hear with respect to that aggravating factor. You will recall that evidence was presented to you that Gloria Simonelli was the victim of an assault on or about the 16th of March, 1988, that as a result of that assault she went to the police, gave statements and signed complaints charging Richard Highlander with having committed that assault, that in the interest of insuring that she be able to testify she also sought the protection of a domestic violence restraining order, an order that she obtained the day after the assault and an order which was also granted her after she appeared in court on the 31st of March to testify about the assault that had been committed against her.

You will recall that evidence was presented to you that in conversations with family and friends, Gloria Simonelli indicated her resolve to see the thing through, to fully prosecute Richard

Highlander for the assault that was committed against her on the 16th of March. You will recall that there was testimony that Richard Highlander was aware of the existence of these charges, that he received the documents in the mail, that he was notified of the restraining order by phone and that he was physically present in the courtroom to hear Gloria testify against him regarding the assault but in the context of the hearing on the granting of the restraining order on the 31st of March.

You will recall that there was evidence that Richard Highlander was concerned about these charges against him, concerned that if these charges were fully prosecuted that he could end up in jail over those charges. You will recall that there was evidence that he discussed this concern with his friends, with a police officer that he apparently trusted and that he made efforts to try to get out from under these charges, and you will recall that there was testimony that the defendant discussed that he was so concerned with avoiding jail for

these charges that he determined that it was necessary to kill Gloria Simonelli to prevent her from testifying against him, and there was evidence that after the killing was completed that Richard Highlander admitted to his relatives, admitted to police officers that the purpose for killing Gloria Simonelli was to prevent her from testifying against him in the assault matter.

This evidence, ladies and gentlemen, was presented to you during the first phase of the trial in an effort to convince you that the killing of Gloria Simonelli was planned, that it was purposeful and premeditated, by demonstrating that he had a motive to kill Gloria Simonelli. That same evidence, ladies and gentlemen, suggests the aggravating factor that the killing of Gloria Simonelli was committed for the purpose of evading trial or punishment for the charge he had committed earlier, the aggravated assault on the 16th of March.

The other aggravating factor that is suggested by the evidence is that in the course of the killing of Gloria Simonelli

that Richard Highlander purposely or knowingly created a grave risk of death to another, specifically Patrick Sullivan, and I suggest to you as I did with respect to the other aggravating factor that you have already heard all of the evidence that you need to hear to determine that that was the case. You have heard evidence that Patrick Sullivan was in the bar the evening that Gloria died, you have heard evidence that the two of them left the bar together and when they emerged from the bar and entered the parking lot that they were within six inches of each other. You have heard evidence that when the defendant saw the two emerging together from that bar, he took the gun that he had with him and approached the two of them while they were still together, that he pointed that gun in the direction of both of them, that he fired three shots at the two of them and that after he was arrested he admitted to the same law enforcement officers and the same relatives and friends that he had in fact directed one of those shots specifically at the person of Patrick

Sullivan.

That evidence was presented to you in the course of the first phase of the trial in an effort to convince you and demonstrate that an assault was committed against Patrick Sullivan, that a shot was fired at him with that same gun in an effort to cause bodily injury to him and that self same evidence. Ladies and gentlemen, suggests the other aggravating factor, that in the course of commiting the killing of Gloria Simonelli that Richard Highlander purposely or knowingly created a grave risk that Patrick Sullivan would also die.

I therefore urge to you, ladies and gentlemen, that rather than listen to additional witnesses and rather than hear or see different pieces of evidence, that all you need do is to refer back to the testimony and the physical evidence that relates directly to these aggravating factors. I commend to you, therefore, first the testimony that you heard from John and Gloria Simonelli that they learned that their daughter had been assaulted on the 16th of

March, 1988, that they accompanied her to the police department for the purpose of her giving statements to the police and signing complaints, that she was further accompanied to Atlantic City so that she could take out a domestic violence restraining order, that they were physically present or at least Gloria Simonelli was physically present when she testified in the family court against Richard Highlander and that she was physically present to see that Richard Highlander was also there in the courtroom hearing every word that Gloria said against Richard Highlander, and the further testimony of John and Gloria Simonelli that as they discussed this with their daughter during the six weeks that separated the assault and her death that she indicated a desire, a purpose, a will to see the charges through and to continue to prosecute those charges.

I commend to you the testimony of Jean Bruni or Jean Henderson, Gloria Simonelli's supervisor, that she too became aware of the assault incidents against Gloria on the 16th of March, that she too had

conversations with Gloria after Gloria's return from her absence, return from her disability absence, during which Gloria articulated a resolve, a desire to continue to see these charges through and to follow through and prosecute Richard Highlander for the assault that had been committed against her.

I commend to you the testimony of Investigator Rummler of the Prosecutor's Office who indicated to you that in furtherance of Gloria's resolve to prosecute the matter she came to the Prosecutor's Office on the 30th of March, 1988, that she gave a long detailed statement to Investigator Rummler outlining what had happened to her on the 16th of March, that Investigator Rummler with this information appeared before the Atlantic County Grand Jury, a grand jury that determined to indict Richard Highlander for aggravated assault, for terroristic threats, for criminal restraint and that a copy of this indictment along with a copy of Gloria Simonelli's statement would have been sent in the

ordinary course of the Court's business to Richard Highlander prior to the time of Gloria's death.

I commend to you then the testimony of Diane Pond who had a conversation with Richard Highlander in the early part of April 1988 where Richard Highlander indicated to her that these charges had been brought by Gloria and that he was concerned about these charges, concerned that these charges would cause him to have to go to jail and the further conversation with Diane Pond on the 20th of April where Richard Highlander indicated that he was concerned enough over these charges that he was going to go to a lawyer that very day to try to have the lawyer prevail upon Gloria's parents to withdraw these charges.

I commend to you the testimony of Jennifer Saitz, an acquaintance of Richard Highlander who indicated that she was the one who picked Richard Highlander up that day, the 20th of April, that she's the one who took him to the lawyer's office so that he could address these charges, who described

how Richard Highlander appeared more emotionally distraught after visiting with that lawyer and how she described in conversations later that evening how Richard Highlander indicated how concerned he was with this these charges, how concerned he was with the specter of going to jail over these charges and how he was even considering killing Gloria Simonelli in an effort to get out from under these charges.

I suggest that you recall the testimony of Robert Brooks, a friend of Richard Highlander for ten years, Robert Brooks who testified that he had multiple contacts with Richard Highlander between the day of the assault and the day of the killing, that he was even present with Richard Highlander when he received the indictment papers in the mail, that Richard Highlander indicated to him his concerns about these charges, that these charges might result in him going to jail and where Richard Highlander indicated that he would kill Gloria Simonelli to prevent her from testifying against him and putting him in

jail and his recollection of the conversation that took place in his very own apartment on the 24th of April, the day before Gloria died, wherein Richard Highlander indicated that he had determined to kill Gloria Simonelli to prevent her from testifying against him on these charges.

I commend to you the testimony you heard from Michael Reed, another friend of Richard Highlander, testimony that parellels that of Robert Brooks in that it contains conversations with Richard Highlander where Richard Highlander acknowledges that he was aware of the charges against him, acknowledges his fear of going to jail as a result of these charges, acknowledges a decision to kill Gloria Simonelli to prevent her from testifying against him and even showing him a gun that he had acquired and which he told Michael Reed was acquired for the purpose of killing Gloria Simonelli so she would be unable to testify against him.

I commend to you the testimony of Detective Mooney, member of the Atlantic

City Police Department, who had multiple phone conversations with Richard Highlander during this six week period, and during those conversations Richard Highlander acknowledges that he knew these charges against him existed, that he was angry about it and that he had no intention of going to jail.

I ask you to recall the testimony of Moishe Shinar and the testimony of Rufus Duff, both of whom indicated separately that they had conversations with Richard Highlander during this six week period, both of whom indicated separately that Richard Highlander indicated his concern over these charges, his concern over going to jail over these charges, and after the crime was committed I refer you to the testimony of Judy Bryars, the defendant's aunt and the conversation that she had with Richard Highlander that he felt that he had to kill Gloria because of the charges that she had brought against him, lest she testify against him and put him in jail, and then there were the interviews that were conducted by Lieutenant Welsh, by Investigator Juliano, by

Special Agent Davis, Special Agent Clemens of the FBI, all of whom indicated that Richard Highlander in the course of admitting to the shooting of Gloria Simonelli told them that his purpose in killing her was to avoid going to jail, was to avoid going to jail if she testified against him on the aggravated assault charges. All of this evidence I suggest to you and commend to you on the aggravating factor that the killing of Gloria Simonelli was committed for the purpose of preventing her from testifying against him, for the purpose of avoiding trial and punishment for that unrelated charge, the charge of aggravated assault.

With respect to the other aggravating factor, that in the course of the killing of Gloria Simonelli there was a purposeful or knowing creation by Richard Highlander of a substantial risk of death to Patrick Sullivan, I commend to you first the testimony of Terry McCabe and the testimony of Jean Henderson to the effect that Patrick Sullivan was in the bar with Gloria Simonelli that evening before they themselves left. I

commend to you the testimony of Patrick Sullivan himself and of Tonya Martin, the woman who was working at the bar that night who indicated that when Patrick Sullivan and Ms. Simonelli left the bar, that they left the bar together, that when they emerged into the parking lot they were six inches apart, that the gunman confronted the two of them together, that the gunman was in fact armed with a handgun which he pointed at the two of them and that he fired three times and I commend to you the testimony of Doctor Jason and Officer Harbison and Sergeant Hannigan that accounts for those three bullets or at least two of them, that only one of them struck Miss Simonelli, that apparently one pierced her clothing not striking anyone and that the third one was at least consistent with the evidence at the scene of a recent mark in the asphalt in the area where Mr. Sullivan would have been, a mark that is consistent with a shell hitting the ground and exploding and sending shel fragments into the overhang from which Mr. Sullivan and Miss Simonelli had emerged, and I commend to you

the testimony of Michael Reed, of Robert Brooks and Judy Bryars, all of whom had conversation with Richard Highlander where he admitted that he took a shot at Patrick Sullivan and the testimony of the four officers who interviewed Richard Highlander, all of whom received admissions from Richard Highlander that during that event he did in fact take a shot at Patrick Sullivan because Patrick Sullivan constituted a threat to him, to his getting away.

Ladies and gentlemen, because I suggest to you that you have already heard through those witnesses all of the evidence that you need to hear on these aggravating factors, the State will not present any additional witnesses, will not offer any additional evidence in an effort to convince you that those two separate and distinct aggravating factors exist. Ladies and gentlemen, there are two aggravating factors, as has been indicated to you by the Court and as I have discussed them with you this afternoon. I suggest to you, however, that these aggravating factors have something in

common, both in the abstract and as they apply to this particular case. What they have in common, I suggest to you, ladies and gentlemen, is that they reveal a certain arrogance, that they reveal a certain enhanced level of dangerousness, that they both reveal a callous --

MR. PRESTON: Judge, may we approach, please?

THE COURT: Mr. Talasnik, I would prefer at this point that you refrain from any arguments and simply outline what it is that you believe the proofs of the case may be. The time for your argument will be later.

MR. TALASNIK: Without discussing the reasons why these aggravating factors therefore have been so designated, either in the abstract or as they apply to this particular case, I commend therefore to you now the evidence that you have already heard so that you will be able to assess those two aggravating factors to come to a conclusion as to whether for this case and for this defendant death is the fitting and

appropriate punishment. Thank you.

MR. PRESTON: May we approach?

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: As I understood and reserved my objections till the end of Mr. Talasnik's opening as much as I could, the last part was just too egregious. Mr. Talasnik spent considerable time discussing premeditation, intent to kill such that it's very easy for the jury to now feel that premeditation is an aggravating factor. I don't think it's fair to let that thought linger with the jury till the end of the case. Mr. Talasnik also said it was not necessary for them to hear other testimony. He did not really distinguish in that remark or even until much later on that he might have only been referring to testimony about aggravating factors. It appeared to be an invitation for the jury to dismiss any testimony about mitigating factors. I object to Mr. Talasnik's reference and pursuit, the notice that I gave you at the beginning of these proceedings, as to the use of hearsay

by Gloria Simonelli, as to the things that she told various people. I don't think that the hearsay exceptions that Your Honor considered in the guilt phase are applicable here.

Finally, I believe that Mr. Talasnik said that there was a threat to kill Judy Bryars. There was never a threat to kill Judy Bryars. Miss Bryars said she felt threatened, but the only thing she said was that there were certain remarks that Mr. Highlander made in general which she construed to be a threat. However, Highlander always said you're family, so I think that was a total misrepresentation of the facts. Those are my objections to Mr. Highlander's opening. I would ask that Your Honor correct --

THE COURT: Mr. Talasnik's opening. I didn't hear anything about a threat to kill Julie (sic) Bryars. I don't know what you're talking about on that one. Mr. Talasnik, do you have any other remarks you want to make?

MR. TALASNIK: The only

reference to pre-medication was in an effort to explain to the jury that evidence offered for one purpose in the guilt phase, that that same evidence can be considered with respect to this aggravating factor. There was no effort to introduce premeditation as an aggravating factor. I'm trying to think of what the other two objections were. I definitely made no reference to any threats to Judy Bryars. I know that.

With respect to the hearsay problem, Your Honor has already ruled on multiple occasions that the statements by the victim as to her state of mind in that she was willing to prosecute the charges to the extent that that state of mind was made known to the defendant, that that is admissible evidence. There has been no change in the ruling as far as I know.

THE COURT: Are you now resting?

MR. TALASNIK: Yes, Your Honor.

THE COURT: Okay.

MR. DAVIS: As to the premeditation issue, I think the transcript

clearly is going to reflect that this went on for about five or ten minutes. It wasn't just one brief word. It was the dredging up of the whole retrial of the case. He just didn't tell the jury that they found him guilty. He dredged up the whole premeditation, the whole motive, weaved it into his aggravating factors, that's the problem.

THE COURT: I'm not satisfied that there was any impropriety, certainly nothing that requires my intervention at this point. Two comments. First, I have already instructed the jury briefly and will at the end of the proceeding at some length the proper limitation of their focus and that for example the fact that they have already found the defendant guilty of the purposeful and knowing murder is not in and of itself an aggravating factor, but secondly the same evidence that may have been considered evidence of, your word, not mine, of premeditation in the first phase of the trial is in many respects relevant to the purpose and to the killing, and to the extent that

motive evidence might have been relevant in the first part of the trial, that is now relevant for the establishment of what I now call the second aggravating factor and is not disqualified. I'm satisfied that the references in the opening were not inappropriate. Motion to I gather make some limiting instruction now apart from what I've already done and what I'll do later is denied.

(The sidebar conference was concluded).

THE COURT: Ladies and gentlemen, with that presentation the State rests in terms of presentation of evidence in this phase of the trial. The defendant as I mentioned to you has the right but never the obligation to introduce evidence at this phase of the trial as well, and Mr. Preston also has the right on behalf of the defendant to make, if he chooses, an opening statement outlining what kind of evidence he anticipates you would hear in connection with the defendant's presentation. Mr. Preston.

MR. DAVIS: Thank you, Judge.

Ladies and gentlemen, I'm going to ask your forgiveness initially. You might determine that I've got a small cold and I'm not going to get close to the jury box and take a risk that you might catch it, so have patience with me, I might be a little slow. I can't help but be impressed by Mr. Talasnik's very competent and very good closing statement in the guilt phase of the trial and with his opening statement in this phase of the trial, but I think you, ladies and gentlemen, understand that the justice that you administer in the courtroom isn't going to be dependent on how artful or how inartful any particular lawyer might be in presenting the case. The justice that you administer is based on what's in your hearts, the reasoning of your minds and applying it to.

The evidence of the case. The evidence isn't always selective either. Mr. Talasnik recounted the things that he wanted you to remember right now. He recounted that Jennifer Saitz for example said that Rick was worried about the charges, that he was going to kill Gloria. What he forgot to tell you

or didn't tell you or didn't recall for you, you can remember for yourself, is that in that same statement Jennifer said he was going to kill Gloria and kill himself. You remember that Bobby Brooks testified about the same type of thing, but he didn't just say that Rick was going to kill Gloria because he wanted to get rid of her because of the charges. He testified also that Rick had mixed emotions, mixed emotions, so you can't just take part of the evidence and make a judgment on it. You have to look at all of the evidence if you're going to be fair and come to the conclusion about what you believe and what you don't believe, because the bottom line isn't what Mr. Talasnik feels and it isn't what I feel that's going to make the decision in this case.

The decision about whether Rick is going to be killed or not killed for this crime is your decision. It's a decision that you're going to carry out of this courtroom with you. Once you make it, you're not going to be able to put it down. Once you make that decision there's nothing in the world

that's going to let you get rid of the responsibility for that decision. You're going to carry it with you into eternity, and so the law sets up the procedure that it does to try and help you so that you will be able to carry that responsibility out of this courtroom. You can do it if you fairly look at all of the evidence.

Last week you established that Rick was guilty of killing Gloria. You established that. Last week the State's obligation was to prove that to you beyond a reasonable doubt. They did it. Last week Mr. Davis had an obligation too. He had a different kind of obligation. Every defendant is entitled to have the best defense the way he sees the case presented to you. Our constitution and our laws don't say we can only present a defense if it's real, we can only present a defense if it's truthful. The defendant gets to show the jury how he feels and it's the jury who decides what's truthful or not and you decided what's truthful. Nobody is arguing with you about that.

Now, the question this week, today, is something different. Mr. Talasnik has the obligation to come before you with two aggravating factors in his hand and to ask that you kill Rick. That's his obligation. I have an obligation to present to you all the reasons why you shouldn't kill him, as many as I can find, and what I present to you this week doesn't depend on what Rick wants or doesn't want. Our Supreme Court created some rules about that. I have an obligation to make this proceeding a proceeding of as much integrity and responsibility as possible and it can't be done if I withhold evidence from you about mitigation, it can't be done by following just what the defendant wants. The decision is too serious and that's what our Supreme Court has said, so I think you're going to see from the evidence that comes before you just exactly what I mean.

The Prosecutor and I both acknowledge that you found certain things last week. You found Rick guilty of Gloria's murder, you found Rick guilty of attempting

to cause bodily injury to Pat Sullivan, but in the course of coming to those decisions the Prosecutor wants you to believe that you also decided a lot of other things, a lot of other subordinate facts. I'm not going to presume to believe that you did or you didn't. Those verdicts that you returned could have been returned disbelieveing some of the facts that the Prosecutor wants to say you decided right now, could have been, I don't know, I wasn't in the jury room with you, no one was in the jury room with you. You know that and I don't think it's fair for anyone to presume why you did what you did. It's enough for us to know that you did your best to find the truth and we should be content with that and we should be thankful for that.

Now, where do we stand right now? The first thing you know for sure about your verdict is that Rick is going to spend at least 30 years of his life in jail. Now, considering that the Judge could impose up to a life sentence, considering the additional charges that you also found him guilty of

that the Judge still has to sentence him on for that, I think you can be pretty well assured that Rick is going to spend the rest of his natural life in jail. That much you know. No question about that. We're not here to decide whether Rick is going to be punished or not or how much. We know how much he's going to be punished. That's the base line. The question is was this crime so serious, so outrageous according to our legislative standards that you should take on the responsibility and kill Rick. Is it that kind of a crime? That's what we're here about right now.

In order to do that, as the Judge just said, the responsibility is so serious that the law has structured it in such a way that if anyone of you feels in a Rick should not be killed, has a reasonable doubt that Rick should be killed, a reasonable doubt as to whether the aggravating factors outweigh the mitigating factors or reasonable doubt about whether an aggravating factor even exists, that one person can say to the jury, no, he's going to

live, and our law creates such tremendous respect for that one person's conscience that if you believe that way and after fair discussion with all the rest you continue to believe that way, your verdict has to be a life verdict. You come back, you can not agree and Judge Perskie has to impose the sentence of imprisonment. That's how much the law has respect for the conscience of each and everyone of you, because when you come back you're going to carry that burden of your decision out of this courtroom and the law wants you to be able to do that.

Now, before we get into the testimony that I want to present, I want to leave one thought with you. Mr. Davis and myself have worked on our legal obligation so that what Rick had to say in the guilt phase could be presented to you. You should not feel or think that we view Gloria's death any less tragically than you do. Because we've had a legal obligation to fulfill it doesn't mean that we're insensitive to what Gloria's parents feel or what anybody else feels, but one thing that I know about those feelings.

Sometimes we have feelings that are so strong that we think we need to do something as strong as the feelings are to remedy the situation. We know from our experience that's not always the case. We know from our experience that it's very easy to overreact and do the wrong thing. If we're going to react and we're going to do justice here, it's got to be a justice that's reasoned but sensitive and that doesn't exhibit the kind of gratuitous violence, the kind of callousness that brought us all here together for this trial in the first place. We've got to be better than that.

Now, if you're faithful in paying attention to the evidence and really considering it. If you're faithful in listening carefully to the law as Judge Perskie is going to explain it to you, you're going to be able to do that and you're going to be able to live with your decision in this courtroom. I say that to you for a particular reason. It's going to take me sometime to present the evidence that I have. It's not always going to be exciting,

not always going to be like Perry Mason. It's going to require some hard looking and careful looking on your part to listen to it, to hear it, to digest it.

There's going to be a video tape that's about an hour and a half long. It isn't easy to sit through. Some of the stuff you're going to hear you're not going to want to hear. You're going to prefer that you were doing something else. Please make sure that all of the evidence gets into your ears, through your mind so that your decision is the best decision you can make in this case. Remember you're deciding if you want to kill Rick. I can't think of anymore serious decision that you'll ever make in your life other than whether you're going to take the life of another human being. Thank you.

THE COURT: Thank you, Mr. Preston. Are you ready to proceed with the first witness?

MR. DAVIS: I should be, Judge. First witness, Judge, is Carol Young.

C A R O L Y O U N G, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. PRESTON:

Q. By whom are you employed?

A. Atlantic County Prosecutor's Office.

Q. How long have you been employed there?

A. Fourteen years.

Q. In the course of your duties did you have occasion to become involved in the investigation and prosecution of one Richard Highlander, Jr.?

A. Yes, I did.

Q. During the course of that investigation did you come in contact with any personal property of his?

A. Yes, I did.

Q. And what was this personal property?

A. It was a brown leather valese.

Q. And how did you come in contact with this property?

A. I secured the valese from Sergeant Raymond Bolis from our major crime squad.

Q. And Sergeant Bolis, do you know where he got that from, the valese?

A. I don't recall at this particular

time.

Q. It was the defendant's property, however?

A. Yes, it was. I believe it was secured from someone at the Atlantic Palace.

Q. Do you know when that was secured and when you received it in your custody?

A. May I check?

Q. Certainly.

A. I received the valese from Sergeant Bolis on August 11, 1988.

Q. And do you know what time, when it was left at the Atlantic Palace?

A. No, I don't.

Q. Have you had the opportunity to review any reports of Sergeant Bolis or any other police officer as to when it was left at the Atlantic Palace?

A. No, I haven't.

Q. In the valese was there an item, a letter that was addressed to a John and a Gloria?

A. Yes, there was.

Q. And do you have that item with you?

A. Yes, I do.

(Exhibit D-8, handwritten letter, was marked for identification).

BY MR. PRESTON:

Q. I show you what's been marked D-8 for identification. Is that the letter that was contained in the defendant's valese that you have in your custody?

A. Yes, it was.

Q. And how many pages is the letter?

A. Seven.

MR. PRESTON: No further questions, Judge.

THE COURT: Mr. Talasnik.

CROSS-EXAMINATION MR. TALASNIK:

Q. Mrs. Young, is the letter signed?

A. No, it's not.

Q. Is the letter dated?

A. No, it's not.

Q. Are you able to determine if the letter was ever sent to anyone?

A. No.

MR. TALASNIK: No Further questions, Your Honor.

THE COURT: Mr. Preston.

MR. PRESTON: I have no further

questions, Judge.

THE COURT: You may step down, Ms. Young. Thank you very much. You may call your next witness.

C E C E L I A A L F O N S O, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. PRESTON:

Q. What is your occupation?

A. I'm a social worker.

Q. And do you have a practice in that occupation?

A. Yes, I do.

Q. And wnere is that practice located?

A. Jersey City, New Jersey.

Q. Do you have any education or professional training that qualifies you to work in that occupation?

A. Yes, I do. I have a masters in social work which I obtained in 1977 from Rutgers graduate school, in social work. I have a BA degree which I obtained in '75 from Hood College, which is located in Frederick, Maryland. I have a BA degree in sociology and psycology and I'm a licensed practical nurse in New York and New Jersey.

Q. Do you have any licenses or certifications that qualify you to work in the State of New Jersey or in any other state in the field of social work?

A. Yes, I am a certified social worker certified in New York State. There is no certification process in New Jersey. Social workers are currently trying to get that in the state. I'm also a member of the Academy of Certified Social Workers and I also have diplomate status in the National Association of Social Workers and I'm registered under the National Association of Social Workers clinical register.

Q. Could you relate to us your professional experience in the field of social work, how long you've been engaged in that field?

A. Well, my professional career in social work began in 1975 essentially when I was a graduate student in social work and I received my training at the Edison Community Mental Health Center where I received my basic training in social work working with families and groups and also began my

concentration around the issue of family violence, battering.

Q. Do you have any subsequent experience in that field?

A. Yes, I do, after I finished graduate school I obtained a position as a social worker in the consultation and education department of the College of Medicine and Dentistry which is located in Newark. In my role as a social worker I served as the clinician and mental health consultant to community based agencies in which I served as a bilingual trainer. I speak Spanish fluently and I'm bi-cultural and in that role I help community based agencies develop programs in the area of child care management, battering, rape and human sexuality.

Q. This was in what year about?

A. This was about 1976 I believe.

Q. What was the next experience you had in that professional area?

A. After that I worked for Beth Israel Hospital which was also located in Newark and in that position I was supervisor for a full

staff of mental health case workers whose primary task was to help individuals who had chronic histories of mental illness return and adapt to community living.

Q. This experience was followed by what?

A. Then after that I went on my own and began -- from 1978 to the present time I was senior manager of Alfonso Associates, which is a consulting firm that provides a broad range of clinical and consultative services to institutions in the public and private sector. For a period there from '85 to '88 I had a partner and at that time was known as Alfonso Associates.

Q. Have you had any experience working in psychiatric hospitals in the field of social work?

A. Yes, I did, for several years I worked at Kings County Hospital, which is located in Brooklyn, New York and it's the second largest psychiatric emergency room outside of Cook County Hospital which is located in Chicago. In my role as a social worker in the psychiatric emergency room I provided services to individuals who were in acute

psychotic states. I also worked with families in crisis dealing with battering or adolescent adjustment problems, geriatric problems, for example individuals who were suffering from Alzheimer's disease or senility.

Q. Have you participated in or provided training or consultation in any specific areas of social work?

A. Yes, I have, because of my work around the issue of battering I've done a lot of lecturing and consultation in the area of domestic violence. For example, just to name a few, last year I was asked by the New Jersey Family Court Judges' Retreat, they have an annual retreat and I was asked to address the issue of family violence and domestic violence. I have also provided, have given lectures on violence in a volatile society. For example, that occurred at the University of Missouri in Kansas City, Missouri, I was a visiting lecturer there and also taught some classes. I've also addressed the issue of family crisis, battering, the intervention and treatment of

battered women to a variety of groups, for example the Association of Black Social Workers, Coalition for Battered Women and a variety of other community based groups. I have also provided lectures on the area of the interviewing process, profit and racism as mitigating factors.

Q. Have you ever testified in court before in the field of social work?

A. Yes, I have.

Q. What courts have you testified in?

A. I've testified in New Jersey and in New York and I've testified in criminal court.

Q. What types of cases have you testified in?

A. Well, they've been essentially basically two types of cases, criminal cases, homicide cases and cases where I've been asked to address the issue of battering, family violence and the battered woman syndrome which is also an area of expertise.

Q. In these courts in which you testified, were you qualified as an expert with regard to your testimony in these

Courts?

A. Yes.

MR. PRESTON: Judge, at this time I'd like to offer Miss Alfonso as an expert qualified in the field of social work work.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Under the provisions of 2C:11-3c(2)(b), I don't know that I would be in a position to enter an objection, but to the extent that I am, I don't object to the qualification.

THE COURT: Excuse me a minute while I find out what he's talking about.

MR. TALASNIK: If you have the same version that I do, Your Honor, it's page 57.

THE COURT: Thank you.

MR. DAVIS: May we approach.

THE COURT: It's not necessary. Just in connection with some language in the statute about how these proceedings are to be done. Bottom line is that Mr. Talasnik indicates no objection. Again if you'll remember from last week, in

connection with expert evidence it's my role to decide whether a witness may testify as an expert and therefore give testimony about opinions or conclusions that he or she in this case obviously may have. It is your role to evaluate the testimony, to evaluate the qualifications, background training of the expert and to decide what significance you will give to the opinions or conclusions that the expert gives you. Remember as before that expert evidence is not binding on a jury, it is offered to assist in the determination you have to make. I will permit Ms. Alfonso to testify as an expert in the area of social work. Mr. Preston.

BY MR. PRESTON:

Q. Did you have occasion to become involved in the investigation into the social history of Richard Highlander, Jr.?

A. Yes.

Q. And when did that occur?

A. It began in December of 1988.

Q. How did you commence your investigation?

A. I began by reviewing some documents

that I obtained from you and the other attorney, getting some demographic information from Mr. Highlander, basically that's how I began.

Q. When you say demographic information, what type of information would you say demographic is?

A. You know, date of birth, name of family members, addresses, telephone numbers.

Q. And you indicate that you also obtained some documents. Did these documents include prosecutor's reports, police reports and things of that nature?

A. Yes, they did.

Q. After that did you begin to conduct any interviews yourself or your firm?

A. Yes, I did.

Q. And who did you first interview?

A. I began my investigation by interviewing Mr. Highlander, Sr.

Q. And where did that take place?

A. It began, I called him on the phone myself and one of my associates called him on the phone and we introduced ourselves and then after he asked me several questions

about, you know, who I was and what was my purpose, I then flew out to Greenfield, South Carolina, and interviewed him at his home.

Q. And what facts did you learn during that interview concerning the early childhood of Richard Highlander, Jr.

A. Well, Mr. Highlander, Sr. said several things during the interview. He said first of all that he loved his son and that he married Mrs. Lucy Highlander, Richard's mother, when she was about 17 years old, that Richard, Jr. was born in Florida, Orlando, Florida, that he essentially had an uneventful, normal childhood except when Richard, Jr. was about five years old his mother, who he described as a wild and loose woman, left him with their three children and the three children were Lonnie, Richard's older sister, Richard and his younger sister, Barbara, that Richard had a heart problem which he learned about when Richard was about three years old, that he described himself as a hard working man who owned several gas stations when Richard was very young and that he worked very hard and he described working

about ten to fourteen hours a day. He described himself as a good father who was strict with his children, but that he never abused his children, and incidentally that was a fact that was supported by his present wife, Gladys, who was also there.

He also said that when Lucy left him with the children, that he fortunately had his mother who took care of the children for a period of time and that he then married Gladys and raised Richard. He said that Lucy, the mother of the children, got custody of the two daughters, Lonnie and Barbara, and that he got custody of Richard, Jr.

Q. When did all this take place, when did he relate that this took place, the end of his marriage to Lucy and the beginning of his marriage to Gladys?

A. Well, Richard, Jr. was about five to six years old when that occurred, so Richard was born October 10, 1957, so it was in the early sixties when this happened. He also said that Richard, Jr. was upset when his mother left, that he remembers that Richard

would urinate in the daytime, that he would urinate in his pants and into his boots, that he had nightmares, had a great deal of trouble sleeping and that as he grew older --

Q. At what age was this that this occurred now?

A. This was between the age of five and seven years old, that Richard, Jr. was obviously having some control problems concerning his bladder and having nightmares. He also recalled that as Richard got older around the age of fifteen, what he said was that Richard started hanging out with the wrong crowd and at that time he could tell that he was using drugs because his eyes were red and he didn't know what kind, but he thought that his son was using drugs.

He also said that when Richard was about 17 years old that he had to put him into a psychiatric hospital because Richard had a girlfriend and the girlfriend tried to break up with him and that Richard was very upset, he broke up furniture in the house,

threatened to kill himself and threatened to harm the girlfriend and her family and because of that he put him in a psychiatric hospital.

Q. Except for those incidents, the bed wetting and the incident in the psychiatric hospital, was there anything unusual or remarkable that the father told you about Richard's childhood?

A. Well, he described it, he started out by describing it as an ordinary childhood except for the fact that his mother had left him and the children. He also said when Richard was about sixteen years old he had bought him a gun and I think that's basically it.

Q. What time or what point in his life did Richard cease living with his father?

A. When Richard was about 17 years old, Richard Highlander, Sr. said they sold their business and moved to West Virginia, he and Gladys, and Richard refused to go, did not want to go so he got him an apartment and he stayed in Florida.

Q. Now, there was Richard Highlander, Sr.

and his first wife Lucy, correct?
A. Yes.
Q. And they had a son, Richard Highlander, Jr.?
A. Right, they also --
Q. Did they have any other children besides Richard Highlander, Jr.?
A. Yes.
Q. What were the names of those children?
A. They had -- Gladys had her son, Michael, and a daughter Cynthia, and they had two children.
Q. Who is they?
A. I'm sorry, Gladys and Richard Highlander, Sr. had two children, Andy and Cheryl.
Q. But did Richard Highlander, Sr. and Lucy, they had additional children themselves?
A. Yes, they had two children, Lonnie and Barbara.
Q. You indicated there was a point in time where Lucy left the children with Richard Highlander, Sr. and his second wife Gladys. What happened to Richard's sisters

by the marriage between Richard Highlander, Sr. and Lucy?

A. What happened with Lonnie and Barbara was that Lucy got custody of the two girls and he got custody of Richard Highlander, Jr.

Q. Did the father and stepmother, Richard Highlander, Sr. and Gladys Highlander, how did they describe Rick's relationship with his half siblings?

A. They said that he got along okay with his half siblings. They also went on to describe Richard as someone, Gladys brought this up, that Richard was -- liked to dress, he was a flashy dresser and he liked clothes, that he didn't do very well in school. Gladys added that she had been married to Richard Highlander, Sr. for 28 years, that Richard, Jr., she described him as a respectful boy and that they both tried to be very good parents to him and that there was one area where he did have problems and that was his area around women, that he tended to be very jealous and controlling and possessive of his girl friends and that that seemed to get him in trouble a lot. At one

point during my interview I asked Gladys if I could interview her alone and she looked at Highlander, Sr. and said she didn't see any need for it because she felt that she didn't have any more to say.

Q. When you first began the interview and went down to South Carolina, did you have any reason to believe that you would get anything other than truthful and accurate information from the father and step-mother?

A. No.

Q. Did there come a time when you began to suspect the accuracy of the information that they provided you?

A. Yes, I did.

Q. Would you tell us how that came about?

A. Well, I began to question it for two reasons. One, during the interview, you know, the reluctance on Gladys for me to see her alone and the other one was when I received a document from your office which indicated that Gladys in 1975 or '74 had gotten a restraining order against Mr. Highlander, Sr.

MR. PRESTON: May I have this

marked?

(Exhibit D-19, restraining order, was marked for identification).

MR. TALASNIK: Excuse me, Your Honor, I've never seen the document. I'd like to see that.

MR. PRESTON: I believe he should have. I sent him discovery.

MR. TALASNIK: I just haven't seen this one one. I'll be brief. Thank you.

BY MR. PRESTON:

Q. Coula you tell us if you recognize D-19?

A. Yes, I do.

Q. What do you recognize D-19 as?

A. As the restraining order that Gladys Highlander got against Richard Lee Highlander, Sr.

Q. And you indicate that was in 1974?

A. Yes, that was September 1974.

Q. And in what state?

A. It was in the State of Florida.

Q. And what was the reason for the restraining order according to the document?

A. According to the document the restraining order was in fact for fear of her life and personal well being as well as the well being of the minor children of the parties and just cause to believe injury and fear.

Q. That was a restraining order with respect to Rick's father and his step-mother in 1974?

A. Right.

Q. Now you testified that Richard Highlander, Sr. had told you that there was no abuse in the family, is that correct?

A. No, in fact he --

THE COURT: Excuse me, no, that's not what he told you or yes that's what he told you?

THE WITNESS: I'm sorry, yes, that's what he said. In fact he said, you know, I was a strict father, but I've never abused my children and even Gladys shook her head and said, you know, we were good parents, no, we never abused them.

BY MR. PRESTON:

Q. Was there anything else besides this

restraining order -- strike that. Did you have the opportunity to interview Rick's half siblings?

A. No, I did not, and this also caused me some concern. Near the end of the interview and during several other phone calls that I made afterwards I asked Mr. Highlander if I could have the telephone numbers or access to the other siblings, wanting to speak to them about the house and, you know, how the brothers and sisters were in relation to Richard, Jr., and his response was that he couldn't remember where the phone number was, he didn't know where they were, he couldn't get in touch with them. Well, in my years of experience it clearly showed some resistance and some obvious ambivalence about having me have some access to the family, who of course would give me a broader picture of what was going on in the household, particularly in light of the fact that Mrs. Highlander, Gladys, was reluctant to speak to me alone.

Q. Was there any of this vagueness in any parts of the interview itself with Mr. Highlander, Sr.?

A. Well, he was vague when I asked him about the phone numbers he couldn't remember. Also when I asked him about the specifics of the relationship with Lucy, he was also vague. I partly attributed that to the fact that Gladys was also in the room and my years of experience have taught me, you know, that that may have something to do with it, but also, that also caused me some concern.

Q. When you completed the interview and were in the process of evaluating its results, what conclusions did you reach about the accuracy of the information that Richard Highlander, Sr. had given to you?

MR. TALASNIK: Your Honor, --

MR. PRESTON: I can lay a foundation first if he wants. Doesn't matter, one way or the other.

MR. TALASNIK: My objection is that assessing credibility, I don't know whether that is within the area of expertise that's been established.

THE COURT: If that's the basis for the objection I'm going to overrule it.

I think that there is at this point, Mr. Preston, something of a little foundation problem. I'm a aware of the statute, but I think some foundation --

MR. PRESTON: I can address it now. It would be easier.

MR. PRESTON:

Q. In the course of doing social work, is it the practice in your profession to conduct such interviews as you conducted in this case?

A. Yes.

Q. Is that the accepted practice and standard within the profession?

A. Yes, it is.

Q. And in the course of conducting such interviews is it the practice and are there criteria within the profession for evaluating the accuracy of the information that you obtained?

A. Yes, there is.

Q. And did you apply those criteria and those standards in this case?

A. Yes, I did.

Q. And you did that with this interview

with Mr. Highlander, Sr., is that correct?

A. Yes, I did.

Q. And this is the normal and accepted practice of social work, is that correct?

A. Correct.

Q. When you applied those standards in this case and you evaluated the accuracy of the information that Richard Highlander, Sr. had given you, what conclusions did you reach?

A. Initially prior to obtaining these documents about the restraining order, I saw the information that he gave me as factual information, rather neutral information and descriptive of his son. After I obtained the restraining order and assessed his ambivalence, I questioned the credibility of this information.

Q. After interviewing Mr. Highlander, Sr. and Rick's stepmother, did you conduct another interview?

A. Yes, I did.

Q. And who did you interview at this time?

A. Well, after that the interview that I

conducted was with Lucy Webb, now Lucy Webb. At one time she was Lucy Highlander.

Q. And when did these interviews take place, the interviews with Lucy Webb?

A. Well, initially she contacted me via phone and those occurred in May and she called me and --

THE COURT: May of this year?

THE WITNESS: Yes, and spoke to me and said, expressed initially concern about her son and offered to give me some information, so initially I spoke to her on the phone.

Q. You indicate that she called you.

A. Correct.

Q. Could you tell us the circumstances of how that came about?

A. Well, she had -- her aunt contacted her and told her that myself and my associates were making some inquiries about trying to make contact with her. During the course she stated that she would call me, that I could not call her, that she didn't want to give her telephone number or address.

Q. So you never had at this time Lucy

Webb's telephone number?

A. No, I did not.

Q. Did you have any idea where she lived?

A. No, I knew she lived in California, but that was it.

Q. You had no way of contacting her?

A. No, only after a period of time the only way I could contact her was through her daughter who would call her and she would call me.

Q. Did Lucy Webb explain any reasons why she would not allow you to know where she was?

A. Yes, she said that the reason she did not want me to know where she lived or give her phone number was that she was terribly frightened of Mr. Highlander, Sr. and made it perfectly clear that she did not want to put herself in a situation where he could have access to her telephone number or address.

Q. This was Rick's father she was talking about, is that correct?

A. Yes.

Q. But they had been separated since Rick was five years old, is that correct?

A. That's correct.
Q. Was she still fearful at this point?
A. Yes, she was adamant. She said, you know, I'm terribly afraid of this man, she began by saying that he was very brutal with her and that she was very frightened of him.
Q. During this contact by phone, on how many occasions did she contact you by phone?
A. Oh, there were several. It was back and forth, she called me three or four times.
Q. During these telephone interviews were you able to learn any information from Lucy Webb about Richard Highlander, Jr.'s childhood?
A. Yes, I did.
Q. What information did you learn?
A. Well, during the phone interview, she said that -- she called him Rickey, she talked a little bit about the birth and that Rickey, you know, the pregnancy was normal and delivery was normal, but she said that during the time between the time he was born and the time that she left that it was a terrible time, that she was beaten, that --
Q. Excuse me, she was beaten?

A. Yes.
Q. By whom?
A. Richard Highlander, Jr.
Q. During Rick's pregnancy?
A. No, from the time he was born until the time she left she described it as a horrible time, that she was beaten by Mr. Highlander, Sr., that she was kicked, stomped, her nose was broken, she received bruises and it was a horrible time for her and she felt very bad about leaving, but she left because she was afraid he was going to kill her.
Q. Did she indicate at that point how she came to be married to Richard Highlander, Sr.
A. Yes, she indicated that she was 17 years old at the time and that they had met and he appeared to be a very nice guy and how they got married.
Q. Did she explain her physical condition at the time of her actual marriage?
A. Oh, that she was pregnant if I recall.
Q. And did she explain any discussions that might have been had with family members as to her reasons why she should marry

Richard Highlander, Sr.?
A. If I recall what she said was that the family had suggested that they get married.
Q. And Lucy did marry Richard Highlander, Sr. then?
A. Yes, she did.
Q. How many brothers and sisters did Richard have out of the marriage of Richard Highlander, Jr. and Lucy Webb?
A. Well, she said she was pregnant four times and she gave birth to three, which was Lonnie, the oldest, and Rickey and Barbara. She was also pregnant a fourth time.
Q. What happened to that pregnancy?
A. She said he kicked it out of her and she had a miscarriage.
Q. He kicked her stomach?
A. Yes, Richard Highlander, Sr.; and because of that she had a miscarriage. She said that it was a horrible experience for her, that she left because she was terribly frightened for her life and had suffered a broken nose, bloody eyes, her teeth were loose from her mouth, he would pull her hair, you know, slap her, he raped her on several

occasions.
Q. Was there any rape that was particularly of significance in your conducting this interview?
A. Yes, I asked her, could you give me an example of when you say rape and she said Rickey was about five at that time and she remembers one day he came in from the gas station, it was in the middle of the day and Mr. Highlander, Sr. insisted on having sex. The children were there. She said no. He pulled her down, punched her in her face and raped her in front of Rickey, Jr. and when Rickey went in to stop it, that Mr. Highlander, Sr. stopped it and pushed him out of the way. Since she was -- since Rickey was born with heart problems, he had a defective valve in his heart, she was overly protective of him so she was, you know, not only concerned about her own physical safety, but she was very concerned about Rickey.
Q. Did she express or tell you anything about Rickey's reaction to any of these incidents?
A. Yes, she did. She also said that she

remembered one time when he was about five, and this was after the incident, that he wanted -- Rickey wanted to do something and she wasn't -- she was saying no to him and that he came in and he said to her, if you don't let me do that, I'm going to do the same thing to you that daddy did to you, and she said that she remembered that and that always stayed with her.

Q. Did she recall any experience that she mentioned of a reaction of Rickey's to her leaving?

A. Yes, what she also said was that after she left, and I remember her saying to me that she had two hundred dollars in her pocket and she left because she felt, you know, threatened for her life, and after leaving she came back to see Rickey and the children and this is when she was going through trying to get custody of the children and she had gotten custody of the two girls and had visiting rights to see little Rickey and that she remembers taking him out for a couple of visits to an army base and that he would say to her, you know, mom, why did you

leave me.
Q. In your conversations, your interview with Lucy Webb, what was her explanation or her statements about how and why her leaving of Richard Highlander, Sr. and the children took place?
A. How and why.
Q. How did it take place?
A. Well, she had an appointment with the dentist, her teeth had been loose from one time when he hit her and she had some money in her pocket and she left, got on the bus to go to the dentist and at that moment she decided to leave and try to make her situation a little better and then come back and get the children.
Q. When she left, the children remained with Richard Highlander, Sr., is that correct?
A. Yes.
Q. How long was it after that that she came to have custody again of I believe you said the two daughters?
A. Right, Lonnie and Barbara. It was approximately seven months, I believe.

Q. Did she relate any of the incidents that happened that occasioned her getting those two children back?

A. Yes, she said that Mr. Highlander placed the children in foster care.

Q. The children you're referring to, all three or two?

A. He placed the two girls in foster care.

Q. And he retained custody of Richard Highlander, Jr.

A. Yes, he did, so what happened was that she got a call from the county department of social services who had the children and they said to her, you know, your children are here, do you want custody of them, and she said of course I do, and she came and they gave her custody of the children.

Q. Did she indicate to you whether Richard Highlander, Sr. ever indicated that he was going to give up the children or that she could come get them?

A. Well, what she said was that he said to her, look, you can have the girls and I'm going to keep Rickey because he's my name-

sake. Like I said, after that she made several attempts to visit Rickey, but Richard Highlander, Sr. told her if she came around, according to her, that he would kill her, so she took the girls and stopped coming around.

Q. And did she make any attempts to visit with Rickey, Jr. that were unsuccessful at the father's residence?

A. Yes, she did, she described one time when she came and knocked at the door and she heard Gladys say to Rickey, it's nobody important, and that Mr. Highlander, Sr. came to the door and he told her, listen, I don't want you coming around here anymore.

Q. When Gladys had said that, did she overhear Rickey say anything at that time?

A. He asked who that was and they said to him it's nobody important.

Q. After conducting the telephone interviews, did you arrange to have another interview of a different kind with Lucy Webb?

A. Yes, I did, I had asked her if she had planned to come see her son and she said no, that she couldn't do that, that that was extremely painful for her and she said if she

could be helpful in any other way, I asked if she would be willing to tell me what she said to me over the phone on a video. She said yes, and I went out there and videoed an interview with her.

Q. Now, when you say videoed, what do you mean you videoed?

A. I'm sorry, what do you call that, she consented to have her -- a face to face interview on film.

Q. Put on a videotape?

A. Yes.

(Exhibit D-10, videotape, was marked for identification).

BY MR. PRESTON:

Q. I show you what's been marked D-10, ask you if you can identify that?

A. Yes, I can.

Q. What is it?

A. It's the video, copy of video interview with Mrs. Lucy Webb and it has my initials on it.

Q. It has your initials on it. Did you at one time view this videotape yourself?

A. Yes, I did.

Q. And at the time that you viewed the videotape did you recall it as an accurate portrayal of the actual interview that took place between yourself and Lucy Webb on the dates that you interviewed her?

A. Yes.

Q. And in accordance with that, is that why you put your initials on the tape itself?

A. Yes.

Q. Did you keep that tape in your possession after you viewed it for a period of time?

A. Yes, I did.

Q. Did there come a time when you transferred that tape to another individual?

A. Yes, sir, I did.

Q. What individual did you transfer that tape to?

A. I gave it to Doctor Frank Dyer.

Q. Doctor Dyer had the tape for how long?

A. He had it for 24 hours I think.

Q. And when you received it back from him, were there any additional annotations that were made on D-10?

A. Yes, Doctor Dyer had put his initials

on it.

Q. Now, when you received the tape back, did you inspect it?

A. Yes, I did.

Q. Was it in the same condition that it was when you delivered it to Doctor Dyer?

A. Yes, it was.

Q. Did you come to interview another individual in regard to your investigation of the family background of Richard Highlander, Jr.

A. Yes, I did.

Q. Who was that other individual?

A. Lonnie Savage.

Q. And when did you interview her?

A. I spoke to her also during the month of May. Let me just say that as I said earlier, Lonnie would be the person that I would call if I wanted to speak to Lucy Webb because I have her number but did not have the mother's number, so on several occasions I would speak to her, she would call the mother and the mother would call me back, but I also had the opportunity to interview her and obtain some information.

Q. What information did you learn from Lonnie?

MR. TALASNIK: Excuse me, Your Honor, before we proceed I would want to be heard at sidebar.

(The following takes place at sidebar, outside the hearing of the jury).

MR. TALASNIK: Your Honor, the report that was provided by Mr. Preston indicates that there was a telephone interview of this person not by this witness, but by Patricia Mitchell. What I want to know is whether there are either reports indicating that this person talked to Miss Savage or whether this person who is now testifying is testifying from her understanding of what Patricia Mitchell learned.

MR. PRESTON: That I can cover easily. Patricia Mitchell, the proffer is that Patricia Mitchell works for this social service agency, that she does investigations at the behest of Cecelia Alfonso and that Miss Alfonso supervises Miss Mitchell, that she reviews her work.

THE COURT: Bottom line is who spoke to Lonnie Savage, that's all.

MR. PRESTON: Both of them.

THE COURT: Fine, get that out.

(The sidebar conference was concluded).

BY MR. PRESTON:

Q. You've indicated that you spoke to Lonnie Savage on several occasions?

A. Yes.

Q. Did someone else in your office also speak with Lonnie Savage?

A. Yes.

Q. Who is that other individuals?

A. Her name is Patricia Mitchell.

Q. Does she work for your firm?

A. Yes, she does.

Q. Does she report to you for her instructions?

A. Yes.

Q. And do you review the work that she does?

A. Yes.

Q. Is she also a social worker?

A. She has a masters in psychology.

Q. In the process of supervising her work you review her reports?
A. Yes.
Q. And in your own discussions with the person to be interviewed, in this case Lonnie Savage, did you review the information that Patricia Mitchell also obtained?
A. Yes, I did. In fact I spoke to Lonnie several times and went over what she said to Miss Mitchell.
Q. What information did you obtain from Lonnie Savage?
A. Well, let me just say that I got information from her and on several occasions she was going through some life adjustment, she had just gone through a hurricane so I had trouble getting in touch with her, but she did say several things. One, she said that she remembers living with her mother, Lucy Highlander, and that her father would beat her mother a lot.
Q. When she says her father, to whom was she referring?
A. Mr. Highlander, Sr., that he would beat her mother a lot, that she would cry and

say things like, you know, one of these days he's going to kill me and that she remembers she, Rickey and the baby Barbara would be sleeping and they would hear him hitting her in the other room or see him doing that and they would wake up crying and frightened, that she remembers her mother -- she doesn't remember exactly the date that letter mother left, but she remembers that after her mother left, she and her sister were placed in this foster home, that the father did not tell them why they were placed there except that he told them that their mother was a tramp and that she left them and she was no good.

She also remembers living with her father for a period of time and that he would drink a lot and he would get mad and throw knives at them, he would -- she even remembers one incident that stands out in her mind when the three of them, Lonnie and -- I mean she and her sister Barbara and Rickey were in the back seat of the car and she remembers that he was driving in the front seat and he was drunk and he had a gun and that he took the gun and he pointed it at

them and he said, you know, I should shoot you all, and they were all clumped up and she was the oldest and that she was begging, oh, daddy, please, please don't kill us, that she was terribly frightened of him and that basically he tried to turn them against their mother and also that Rickey was, you know, very attached to her since she was the oldest and that he would cry a lot to her and ask her, you know, is mommy coming back or why did mommy leave me and that it was a horrible time in her life.

Q. Did she describe what the household was like while these children were living with Richard Highlander, Sr. and Gladys, the step-mother?

A. Well, she said essentially that Gladys was not physically abusive to them, but, you know, Gladys to her also lived in terror because he was throwing knives at Gladys also, but that Gladys was not affectionate or caring or didn't make them feel welcome or wanted.

Q. With regard to Lucy Webb and Lonnie Savage, Rick's mother and biological sister,

were you able to make any assessments as to the accuracy or legitimacy of the information that they provided to you?

A. Well, yes.

Q. And what were those assessments?

A. My assessment was that Lonnie Savage's information was fairly consistent with the information that I obtained from Lucy Webb, so they collaborated (sic) their information.

Q. Did you ever have any reason to question the accuracy of any of the information that they provided to you?

A. No.

Q. As a result of your interviews and your investigation, were you able to make a professional evaluation or professional opinion concerning the social and family environment that Richard Highlander, Jr., Rickey, grew up in as a child in his early years?

A. Yes.

Q. And could you tell the Court what your assessment of that social and family environment is?

A. Well, my assessment is that Richard

Highlander, Jr., Rickey's environment was one that was dominated by violence and chaos that took the form of physical and psychological abuse and intimidation and that he was subjected to emotional and the kind of brutality and abuse that in my years of experience is rather startling to see.

Q. Now, in comparison to the examples and the cases that you've studied in training for your profession and that you use in continuing to practice your profession, how does the situation in Rickey Highlander's childhood compare with the current examples in literature or text books that you've studied in your education?

A. Well, let me put it this way; on a scale of one to ten, ten being the worst, Mr. Highlander, Jr.'s early childhood environment --

Q. This is Jr. now?

A. Mr. Highlander, Richard Highlander, Jr.'s early childhood environment is close to a nine, nine and a half. I mean it's horrible.

Q. Nine being the worst?

A. Nine, nine and a half, ten being the worst, particularly from the age of zero to five. I mean seeing your mother raped and beaten, that's very, very, very difficult to handle at that age.

Q. Now, judging by the standards of your profession, were there any procedures that were used by you or any evaluations that were made which were inconsistent with the normal and routine standards of practice in your profession?

A. That were inconsistent?

Q. Inconsistent.

A. No.

MR. PRESTON: I have nothing further.

CROSS-EXAMINATION BY MR. TALASNIK:

Q. Ms. Alfonso, I'd like to ask you first about some of the things that appear on your resume. You're familiar with the resume that was provided so that it could be provided to me?

A. Umm hmmm.

THE COURT: Is that a yes?

THE WITNESS: Yes.

BY MR. TALASNIK:

Q. Do you have a copy of it?

A. Yes.

Q. Under the heading of seminars, conferences, training and consultation, there's a notation about a July 1988 capital punishment conference. Do you find that?

A. What page?

Q. It would be the second page.

A. Yes.

Q. Could you tell me what that was all about?

A. That was working with difficult defendants and poverty and racism as mitigating factors, is that the one?

Q. Yes, that one.

A. That was a conference in which I was asked -- a conference for attorneys who defend capital punishment cases and I was asked to discuss working with difficult defendants and the ideas of poverty and racism as mitigating factors in the penalty phase of capital cases.

Q. Then there's one on the next page with a 1987 date in Kentucky, another death

penalty seminar. Would you tell me what that was all about?

A. Again that was a seminar for attorneys who defend individuals in capital trials and I was asked to discuss the presentation of a case for life, what -- how do I testify and present issues pertaining to an individual's life.

Q. Okay. You've told us that as part of your investigation here beginning in December of 1988 that you went down to South Carolina and talked to the defendant's natural father and his now wife, correct?

A. Correct.

Q. And that the two of them have been married for --

A. 28 years.

Q. During the course of that interview you learned from them that as far as they were concerned there was nothing particularly unusual about the defendant's childhood?

A. Correct.

Q. That as far as they were concerned there was no abuse?

A. Right.

Q. That there was no abuse of the defendant himself?
A. Right.
Q. And that there certainly was no abuse of anyone else in the defendant's presence?
A. Right.
Q. But you determined that you don't think he was being quite honest with you, that is to say the defendant's father?
A. Correct.
Q. And that primarily is because some fifteen years ago the defendant's step-mother got a restraining order against the defendant's father, correct?
A. Initially, yes.
Q. And then of course there was his reluctance to expose to you the whereabouts of the defendant's step siblings?
A. Correct.
Q. There is contained within your interview of the defendant's father some information about how the defendant related to women.
A. Right.
Q. Where did that information come from?

A. Well, he said that, the father also said that.

Q. So it was the defendant's father who volunteered that the defendant went back to Florida where he had several relationships with young women and mistreated them?

A. Umm hmmm.

THE COURT: Is that yes?

THE WITNESS: Yes.

BY MR. TALASNIK:

Q. And it was the defendant's father who volunteered that he's never done well with women, that he treated his girlfriend, Tyler Fitzgerald, so mean that he scared her half to death?

A. Right.

Q. Their information, that is to say the defendant's father and step-mother, is of course in sharp contrast to the information that was provided to you by the defendant's mother and sister, correct?

A. Correct.

Q. And as between the two versions you have determined to believe the defendant's mother and sister's version?

A. Well, yes, but can I add something?
Q. At this point I'm trying to find out where we are. Would it be fair to say that you have determined that you feel more comfortable with the version provided to you by the defendant's mother and sister than with the disclaimers that were given to you by the defendant's father and stepmother?
A. At this moment in time, at this particular moment, yes, I am much more comfortable and it's based on an overall gathering of information that the father was not being honest with me during the interview. At the time of the interview I was not uncomfortable. I mean I was okay with what they said. In light of the fact that they were also saying things like, you know, that he was not very good with women that he was in fact, you know, brutal with women at times.
Q. So if you had not had contact with the defendant's mother and sister, you would have been satisfied that the information provided to you by the defendant's father was accurate?

A. Yes, I mean initially.
Q. But then there was the restraining order and as you've pointed out to us the versions provided by the mother and the sister appear to line up pretty well together.
A. True.
Q. The defendant himself was not the subject of an interview by you, was he?
A. No.
Q. So there was never an effort made to have the defendant tell you which version of his childhood is the accurate one?
A. The defendant, I talked to him on one occasion, on two or three occasions, afterwards he did say that his father was lying.
Q. Do you happen to have any reports that summarize the fact that you in fact interviewed the defendant?
A. No, I don't have any with me.
Q. But you now remember that you did talk to him a couple of times and he accused his father of lying?
A. Yes.

Q. Are you aware that the defendant was interviewed by an Investigator that worked for Mr. Davis and Mr. Preston?
A. I don't recall that.
Q. Well, you told us that you examined certain documents that were provided to you in coming to your evaluation. Was one of the documents a transcript of an interview that was conducted of Richard Highlander, Jr., the defendant, by the Investigator working for his lawyers?
A. Yes, I just need a copy.
Q. All right. Let me have it marked for identification.

(Exhibit S-57, transcript, was marked for identification).

MR. TALASNIK:

Q. Let me show you this set of papers marked S-57 for identification now, like you to just look at it and just tell me whether you recognize what it is.
A. Umm hmmm.
Q. What do you recognize that to be?
A. This is an interview with the investigator from the office.

Q. Do you recognize the series of documents as being one of the exhibits that was sent to you to look at in preparing your investigation?

A. Yes.

Q. Isn't it true that in the course of this interview Richard Highlander was given an opportunity to talk about his relations with his mother and his father and whether there was anything unusual in his social history?

A. Yes.

Q. And isn't it true that he left out the part about seeing his mother abused by his father?

A. Correct.

Q. So in his interview with the investigator he fails to talk about witnessing any abuse?

A. Right.

Q. In his interviews with you which you didn't write up, but which you remember, all he told you was that his father was lying?

A. Right.

Q. But you have determined that as

between the two versions, it's the mother's version that's probably more accurate?

A. Correct.

Q. Now, let's look at the mother's version then as being the one that's accurate and it does in fact indicate that she was physically abused by the father in the defendant's presence, correct?

A. Correct.

Q. Isn't it also true that the mother told you that because the defendant had this heart condition that she was very protective of him?

A. True.

Q. That she was very close to him?

A. Correct.

Q. That she was very nurturing of him?

A. She was protective of him, yes.

Q. Isn't it also true that she told you that on those occasions or some of them where Rick Highlander, Sr. would physically abuse her, that the defendant would come to her aid?

A. True.

Q. That he would come to her and console

her?

A. True.

Q. That he would touch her cheek?

A. Umm hmmm.

Q. That he would let her know in his own way that he knew she was being victimized?

A. That's what she said.

Q. With respect to the incident where Rickey apparently tried to emulate his father by threatening his mother that if you don't let me do what I want, I'm going to do what daddy did to you, remember that?

A. Yes.

Q. Isn't it true that she also told you that she corrected the defendant and told him that he was not to treat her that way?

A. Right.

Q. And that that was the end of the conversation?

A. Right.

Q. She also told you that she left the residence when Rick was about five to five and a half years old, correct?

A. Correct.

Q. So that given that Rick is now about

30, 31 years old, it would have been at least 25 or 26 years since he witnessed any abuse committed on the mother by the father.

A. Correct.

MR. TALASNIK: No further questions. Thank you, Your Honor.

THE COURT: Mr. Preston.

RE-DIRECT EXAMINATION BY MR. PRESTON:

Q. Does the fact that these events happened 26 years ago mean that the rape, the kicking in the stomach, the miscarriage were trivial things?

A. Oh, no, absolutely not.

Q. Does it mean that Rickey would have forgotten about them because it happened 26 years ago?

A. No.

Q. Does it mean that any adult would be able to forget about viewing those things?

A. No.

Q. Does it mean that a child of five years old would be better equipped and more mature so that he could forget about those things?

A. No.

Q. You indicate that you didn't prepare any reports of your discussions with Rickey, is that correct?

A. Umm hmmm.

Q. Was the purpose of your interviews to gather pertinent information from Rickey or Richard?

A. No, my task was to put together a social history and that the focus of Mr. Highlander, Jr. would be an area for the psychologist.

Q. You were interviewing others then that get an outside view?

A. Yes, that was my understanding.

Q. Now, in answer to the Prosecutor's questions, you indicate that Rickey consoled his mother at times during this abuse?

A. Yes.

Q. You indicate that he knew what was happening was wrong, is that correct?

A. Yes.

Q. And you indicate that his mother, when he spoke of doing the same things himself, she corrected him on it?

A. Correct.

Q. Now, all of that is perfectly sufficient to remedy any evil or any effect that that type of behavior would have had on Rickey, isn't it?

A. Her correcting him?

Q. Yes, wasn't that enough to solve the whole problem and and make it as though it didn't happen, go away?

A. Oh, no, no, no.

Q. So in your opinion then there were serious consequences that couldn't be remedied by those little things that the Prosecutor spoke of?

A. No.

Q. No, they couldn't be remedied or --

A. No, the kind of consistent and repeated physical and emotional abuse that occurred in that home which is what I'm addressing is the kind of environment that many adults today in our society are in therapy dealing with because the consequences of that kind of environment can be enormous on an individual as a child in adolescense and later as an adult.

Q. In your professional experience based on what the Prosecutor has asked you, do you find that the children in abusive households go on to be abusers themselves?

A. Yes, all the literature indicates, all my years of work support this, I mean the literature is just peppered with documentation that shows that particularly batterers, when you look at their history, there's a significant history of being subjected to battering and obviously being abused, but also having models that that's the kind of behavior that's appropriate. You know, the whole issue of women being battered in our society is very unconscious of everyone in our society, so a lot of people in the field have been doing a lot of work and everything shows that that seems to be a common consequence of child abuse is that adults become abusers, particularly males, and women become victims.

Q. You indicate to the Prosecutor's questions that you evaluate the father's interview to be more reliable than the interview with the mother and the sister. Is

that just because you liked their story better?

A. No, no. I mean -- no, it's not, no.

MR. PRESTON: I have no further questions.

THE COURT: Mr. Talasnik.

RE-CROSS EXAMINATION BY MR. TALASNIK:

Q. Your discussion about all of the studies showing that children who are exposed to abuse have a tendency to grow up and become abusers, okay?

A. Yes.

Q. Isn't what you're talking about is the fact or isn't what you mean that abusers are somebody who will be set-off in an instantaneous rage by something that the spouse did, either real or imagined, and in that instantaneous rage they commit an act of abuse to the spouse or girlfriend or child or whatever?

A. Are you talking about -- no, it ranges. What precipitates a specific incident of battering depends on the situation and could be precipitated by a variety of things.

Q. Well, there is at least a cause and effect that the person abused does something that irritates the abuser and the abuser acts out in a violent manner?

A. When you speak to a batterer, a batterer will say to you that the reason that I hit my spouse, we're talking in general terms about battering, if you speak to some batterers they will say that she did not move -- she didn't serve me my spaghetti at the temperature that I like. That's why I assaulted her. Other individuals will say to you, I battered her because she went out and spent a hundred dollars over budget, so I guess what I'm saying is that it ranges and what precipitates it ranges.

Q. Where within that range is the batterer's explanation that six weeks after I had a fight with her and six weeks after she signed a complaint against me that could put me in jail I went after her with a gun and shot her to death?

A. Where does that range, where does that fit in?

Q. Yes.

A. I'm not in a position to say right now.

MR. TALASNIK: Thank you. No further questions.

THE COURT: Mr. Preston.

RE-DIRECT EXAMINATION BY MR. PRESTON:

Q. Does the fact that it took six weeks between an incident of battering and the killing of the person who was battered, does that mean that the individual who did the killing was not a battering person?

THE COURT: Mr. Preston, I'm not going to limit what you want to proffer the witness for, but you haven't qualified her to answer that question.

MR. PRESTON: Judge, --

THE COURT: I understand, but we're getting very far afield.

MR. PRESTON: I'm only exploring what the Prosecutor covered on redirect.

THE COURT: I'm not telling you that you can't. I would have sustained your objection to his question too, but at this stage we have to draw some kind of line. If

you want to qualify her to deal with that, you may attempt to do so. Besides, she didn't answer his question.

MR. PRESTON: I'll deal with it with my next witness, Judge.

THE COURT: Anything further?

MR. PRESTON: Nothing further of this witness.

MR. TALASNIK: Nothing, thank you, Your Honor.

THE COURT: You may step down. Let me see counsel briefly.

(Sidebar conference off the record).

THE COURT: We're going to take a few more minutes of testimony this afternoon, just introduce the next witness and get background material. The tape that you heard reference to we'll do tomorrow. We're not going to have that this afternoon.

MR. PRESTON: I call Frank Dyer.

F R A N K D Y E R, WAS DULY SWORN AS A WITNESS, AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. PRESTON:

Q. Doctor Dyer, what is your profession?
A. I'm a licensed practicing psychologist.
Q. And as a licensed practicing phychologist, do you hold any professional degrees?
A. Yes, I do, I have a master's degree that I received from the School Psychology Program of Montclair State College in 1971, and I have a PhD that I received from the Graduate School of Arts and Science of New York University in 1977.
Q. Do you have any certificates in any area pertaining to your field?
A. Yes, I do, I'm a certified school psychologist in the State of New Jersey and also I'm a diplomate in school psychology of the American Board of Professional Psychology and I received this diplomate status in 1985.
Q. Have you had any certificates, experience or education in the field of psychotherapy?
A. Yes, I have, I have a certificate in psychoanalytic psychotherapy from the New York School of Psychoanalytic Psychotherapy,

which is a free standing psychotherapy training institute in New York City.

Q. What did that certificate involve?

A. That certificate involved three years of study in which I took courses one evening a week, there were two courses back-to-back for a total of approximately three hours and I had a hundred hours of clinical therapy supervision, that is to say that I met with a supervising therapist to discuss my cases once per week for fifty sessions with two supervisors apiece. Further, before entering the school I had to have had a hundred hours or so of prior psychotherapy supervision in order to qualify me for the program and in addition to that another requirement of the school is that one have a personal psychoanalysis or psychotherapy of at least 150 hours.

Q. What has been your work experience in your professional field?

A. My first job as a psychologist was as a school psychologist in the McKinley School in Newark in 1971. This is a school that at that time served a lower socio economic

population of about 75 percent Hispanic, from one of the worst housing projects in the City of Newark. My responsibilities in this job included administering psychological tests to children in need of placement, consultation with teachers who were having problems, disciplinary problems with students and other kind of problem students and also doing direct counseling of students within the school and also working with parents.

Q. Was there anything about that experience that you found particularly valuable in your work with this particular case that you're testifying in?

A. Yes, the population of McKinley School at that time as I indicated was a lower socio economic population. Most of the families in the school were welfare families. A great deal of disorganization, problems with violence at home, child abuse and neglect and so many of the children that I saw both for evaluation and counselling were children who had undergone a substantial degree of physical abuse. Also sexual abuse, emotional abuse and neglect.

Q. What other work experience did you have in your professional field?

A. Subsequent to my leaving my school psychologist's job in Newark, I returned to graduate school for my doctorate and as I was in the process of finishing up my doctorate I worked as a research associate and then senior research associate for a major publisher of psychological tests known as the Psychological Corporation, and in that capacity I worked on research projects involving a wide variety of psychological tests and also translation of some psychological tests into Spanish. Subsequent to that I reentered the field of school psychology as a consulting school pshcyologist to a group known as independent child study teams. That job involved primarily giving psychological tests as part of a child study team to children in parochial schools and private schools.

Q. Did you have further experience with evaluating and providing psychological services to children?

A. Yes, I have been in private practice

as a psychologist since 1979 and in that capacity I serve as a consultant to the New Jersey Division of Youth and Family Services. Referrals from DYFS, which is the child protective agency in this State, referrals from that agency constitute between 25 and 30 percent of my practice currently.

Q. In connection with your work with DYFS, were you ever called to testify in court?

A. Yes.

Q. What kind of cases were they?

A. These are known as termination cases, they're cases in which the Division of Youth and Family Services has identified a parent as being too disfunctional to be rehabilitated to the point of being able to care for a child and the purpose of the litigation is to terminate the parental rights of the natural parents in order to permit the child to be freed for adoption.

Q. In your role then of testifying, you testified on behalf of the State?

A. I testified on behalf of the State.

Q. And the State was seeking to remove

the children from the home in which they were being abused?

A. These were children who had already been removed from the home in which they were either being abused or neglected, and beyond the removal of the child the State was seeking to terminate once and for all the rights of the natural parent to that child.

Q. Let me understand this, Doctor. At that point the State had already established abuse and neglect with regard to these children, is that correct?

A. That's correct.

Q. And at this point they were seeking the further remedy of complete termination of the relationship with the parents?

A. That's correct.

Q. And all of this testimony was on behalf of the State's prosecution, is that correct?

A. Except for three instances in which I appeared on behalf of parents who were contesting these actions. In the other 70 or 72 cases in which I have appeared in such hearings, I have appeared on behalf of the

State.

Q. Were there any other kind of cases in which you testified, Doctor?

A. Yes, I have testified in personal injury cases for plaintiffs, I testified in approximately a dozen juvenile referral hearings in which a juvenile who is charged with a crime that would result in automatic waiver up to the adult court for trial as an adult is contesting that and is seeking to have the case held in the family court, and I have also testified in five or so assorted other non-capital criminal cases. Also I've testified in two capital cases, both on behalf of the defense.

Q. Both on behalf of the defense?

A. Yes.

Q. Now, with regard to your experience with the criminal justice system, have you served as a consultant in any capacity in regard to any state institutions?

A. Yes, I have, I've been a consultant to Rahway State Prison and my involvement there was to evaluate Spanish speaking inmates for the purpose of considering them either for

reduced custody or for parole.

Q. And in the course of those services it was the State who retained your services, is that correct?

A. Yes, it was the State.

Q. Do you do any other work on behalf of the State of New Jersey?

A. Yes, I'm a consultant to the New Jersey State Board of Dentistry, in which capacity I examine dentists whom the board is prosecuting for various types of unprofessional conduct.

Q. Doctor, do you belong to any professional organizations?

A. Yes, I do.

Q. Which organizations do you belong to?

A. I'm a member of the American Psychological Association and of its Division on Evaluation and School Psychology, I'm a member of the New Jersey Psychological Association and a former chair of that organization's training and standards committee, I'm a member of the American Orthopsychiatric Association which is an interdisciplinary mental health association,

a member of the Society of Pshcyologists in Private Practice and a member of the New Jersey Academy of Psychology, which is the continuing education group for pshcyologists in this State, and I happen to be president of that group for the current year.

Q. Doctor, have you published any materials in your field?

A. Yes, I have, I've published approximately a dozen papers having to do with applied psychological measurement.

Q. Have you ever been involved in any presentations to other professional groups who were not particularly in your field?

A. Yes, this year I was part of a program that was sponsored by the Forensic Committee of the New Jersey Psychological Association and the State Office of the Public Defender. This was a program on various aspects of child abuse and neglect cases and it was presented to public defenders who were law guardians.

Q. What role does a law guardian play with regard to the child abuse cases?

A. The law guardian represents the

victim. The law guardian appears in court on behalf of the child who has been either abused or neglected and acts as that child's legal representative in any court proceedings.

Q. Then in such court proceedings you have assisted the State in their prosecution of abusers?

A. Yes.

Q. And you have also assisted or rendered some counseling in your presentation to the law guardians, those who represent the actual child?

A. That's correct.

Q. There is the third party of course and that is the defendants, the parents themselves?

A. Yes.

Q. And your presentation was not for the defendants, for the parents themselves, it was for the law guardians?

A. It was for the law guardians expressly.

Q. Did I understand you correctly in some of your qualifications you were indicating

that you are bilingual, you speak both Spanish and English, is that correct?

A. Yes, that's correct.

Q. And the specific issue of that law guardian presentation?

A. The specific issue of my portion of the program was parent-child bonding, the effects of removing a child that is bonded to foster parents, the concept of psychological bonding, that is the child's attachment to a parent, talking about a very fundamental primary emotional attachment that children normally develop to their parents or other caretakers and what happens to these attachments and what happens to the child's psychological development when this bond is disrupted somehow.

MR. PRESTON: Judge, I have nothing further. I offer the witness as an expert and as a psychologist.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, I have no questions nor objections.

THE COURT: Thank you. Ladies and gentlemen, I'm going again to determine

that the witness may testify as an expert in the area of psychology which is the area in which he's been offered as an expert, and we will first thing in the morning hear from him with respect to that testimony. Again my role in this is limited to determining whether he may testify on the basis of his opinions or conexclusions. It will be up to you to evaluate based on your sense of what he has to say and your evaluation of his background and credentials as to how much weight or significance you determine to attach to his testimony.

Doctor, thank you, we'll see you first thing in the morning. You may step down. I'm trying to work out in my mind a schedule for tomorrow so that I do the most unnecessary imposition to you. We will take a couple of minutes in the morning to set up the videotape and also a couple of things that the attorneys and I need to discuss. I'll ask you to be here maybe 9:30 tomorrow morning. When you come in, please report to the same jury room in which you were today. Again by way of caution, please be careful

not to attend any news accounts with respect to the matter. I don't know if you noticed today or not, I don't know if they were here when you were here, but there was some television here today. There may be something on the television with respect to it. Again I ask you to or I specifically direct that you hold yourselves apart from any news accounts with respect to the matter.

As far as tomorrow is concerned, I don't yet know whether we will be turning the matter over to you tomorrow. It is possible and therefore I would ask you to be prepared in the event that's where the schedule takes us to be prepared to stay tomorrow evening past the normal 4:30 recess. Again I don't know for sure now that that's going to be the case, but it is at least possible and therefore I would make that statement to you. If we don't stay tomorrow afternoon either because we've already finished or because we won't get that far, then we'll meet Wednesday. Okay, have a nice evening, see you 9:30.

(Jury leaves the courtroom).

THE COURT: First I'll ask counsel to be ready to go at 8:45. Mr. Preston, please make arrangements for whatever equipment you need for the videotape. I would like before the jury gets started in the morning to take some time in the morning to give final consideration and discussion, potentially final, to the content of the closing charge with which of course the verdict sheet is associated. You have what is my last draft. You had most of it over the weekend. The changes in it from the weekend I gave you this morning, identified them specifically for your attention, so I would like you to be able to discuss that with me in the morning so we know where we're going.

Mr. Preston, in addition, one thing escaped me today when the defendant was still here. Implicitly he has dealt with it, I think it needs to be dealt with explicitly and I will therefore request that you do so. In the event that the defendant chooses not to return prior to the submission of the

matter to the jury, he will in that respect dispose of his right of allocution which the Supreme Court has ruled is not a constitutional convention, but is nevertheless to be afforded. I have already given you an outline of the limitations and the procedures for the right of allocution. As I understand the thrust of the Zola decision, it's something pretty much the defendant has to ask for, and therefore if he's not here one may consider that he's waived it. I would prefer that if he's going to waive it, he waives it by expression rather than by implication. Accordingly, sometime between now and tomorrow I would ask you to discuss the matter with him and be prepared to present to me that in fact you have discussed it.

MR. PRESTON: I can do that now, Judge. I saw him yesterday morning for two hours and we discussed it not only on that occasion, but on a number of occasions before and he does not desire to exercise his right of allocution.

THE COURT: Okay, just so that

the record is clear, you have explained to him what the right is, explained to him how it would be exercized and explained to him that he in his own discretion has the determination to decide whether to do it or not.

MR. PRESTON: I have.

THE COURT: Understanding all of that, you represent to me that he has determined to waive that right?

MR. PRESTON He has, Judge.

THE COURT: In view of the fact that the right is not constitutional, I believe I'm safe to protect the record with your representation which of course as an officer of the court I will accept. I had meant to ask him about it today, but I had forgotten.

(Adjourn)

C E R T I F I C A T I O N

I, GERALD W. ABARNO, A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER OF THE STATE OF NEW JERSEY, DO HEREBY CERTIFY THAT THE FOREGOING MATTER IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN AT THE TIME AND PLACE HEREINBEFORE SET FORTH.

GERALD W. ABARNO, CSR
OFFICIAL COURT REPORTER
LICENSE NO. XI00326

DATE: 10/10/89

A-59-89-74

Part I
pgs. 1-129

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
ATLANTIC COUNTY
INDICTMENT NO. 88-06-1553-C

RECD
APPELLATE DIVISION
JUL 11 1990
Clerk

STATE OF NEW JERSEY,

Complainant,

-vs-

RICHARD HIGHLANDER,

Defendant.

TRANSCRIPT OF
PROCEEDINGS

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

Mays Landing, N.J.
June 27, 1989

B E F O R E:

HON. STEVEN P. PERSKIE, J.S.C.

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQ.

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

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Assistant Prosecutor
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THE COURT: Let me indicate first for the record that Mr. Preston made one suggestion yesterday about the form of the verdict sheet which I have adopted and have changed the phraseology slightly in the wording of the two aggravating factors. There are a couple of issues that we need to discuss this morning, again before we bring the jury in. I notice, Mr. Preston, that there's equipment in the courtroom. Is it ready to go if I wanted to bring the jury in?

MR. PRESTON: It's ready to go. The only thing that will need to be done is the monitor for the jury's viewing will have to be moved forward and the one for Your Honor and for counsel will come back a little bit.

THE COURT: Okay.

MR. PRESTON: I will request, though, that while the tape is being played that I can have my technician sit at counsel table with me.

THE COURT: I have no problem with that. Now, there are a couple of issues

that need to be discussed this morning. First, Mr. Preston, you wish to direct to my attention an article in this morning's edition of the Atlantic City Press. I will for the purpose of the record mark my copy as C-1 for identification.

MR. PRESTON: Judge, if I may, I haven't had a chance to read it. I called Your Honor's attention to it because of some information that was brought to my attention. If I may have a second?

THE COURT: You may.

MR. PRESTON: Judge, I do not perceive the same problem that my investigator perceived and I'm not going to belabor it.

THE COURT: Next issue. You've had the opportunity, gentlemen, to review the proposal for the closing charge in the context of the verdict sheet. Let me ask each of you, Mr. Talasnik first, whether there's anything you wish to direct to my attention under any of three categories, something in there that shouldn't be, that is there that shouldn't be, something in there

that should be worded or structured differently. In Mr. Preston's case there are three provisions in brackets. One of them is now taken care of. There's a line in there which is in a bracket referring to the jury's consideration of anything that the defendant said to them directly. That obviously I will exclude. Then there are two paragraphs in brackets that I'll wish Mr. Preston to address specifically and they are on page two which are to be provided only in the event that the defendant elects that I do so. Mr. Talasnik first.

MR. TALASNIK: Your Honor, first a principal difficulty that I have with respect to the verdict sheet which is referred to as closing instructions is Your Honor's interpretation of at what point subjectivity is to play a role in the jury's determination in the circumstance where they find the existence of aggravating factors and find no mitigating factors. I have no quarrel with the formulation that the Court has that if they find aggravating factors and they find mitigating factors, then they

engage in a weighing process and various alternatives are suggested depending on how those factors are compared. Focusing specifically on a scenario where a jury could conceivably find the existence of one or more aggravating factors and fail to find any evidence of mitigating factors, Your Honor is breaking their decision into a two step process. First step is that they find these aggravating and mitigating factors and the second requires them to make a second and distinct judgment that death is the appropriate penalty.

Now, I recognize that the cases that have been decided by the Supreme Court make it absolutely and positively clear that the jury is not supposed to engage in any kind of mechanical review coming simply to the conclusion that as a matter of fact aggravating factors exist and if no mitigating factors exist then mechanically, by operation of the law, by operation of the legislature and without any responsibility, the death penalty has to be imposed. I understand that.

The problem that I have with the Court's instruction and I don't find that this construction is directed either by the statute, the legislative history or any case, is that you built into this construction jury nullification and you have the possibility of what I perceive to be an illegal verdict. You have the possibility that a jury could find beyond a reasonable doubt that aggravating factor or factors exist, that no juror finds the existence of any evidence of mitigating factors, and yet over and above the will of the people as expressed through the legislature and interpreted by the Supreme Court they still determine that death is not the appropriate penalty or they are unable to determine under the no agreement provision that death is the fitting and appropriate penalty. I don't know that the Court should create a situation where there could be an illegal verdict from which the State obviously has no way to seek relief after the fact, which is why I bring it to the Court's attention now.

I know that the Court has

personally and intellectually agonized over how you balance on the one hand the decision by the legislature that there has to be a death penalty and that the death penalty has to be addressed in the form of guided or directed discretion through the creation of aggravating factors and the fact that if you don't have guided discretion you have the constitutional evil of widely divergent views expressed by the whim of different selections or groupings of people so that different juries could come to different versions on the same or similar facts, balancing that on the one hand with the concept on the other hand that jurors have to make a subjective determination that death is the fitting and appropriate penalty.

My understanding of the way the Court, the Supreme Court has dealt with that issue is not to say to the jurors that it is a two step process, that you find aggravating factors to exist and then you make a separate and distinct determination that death is appropriate. My understanding of what the Supreme Court has done in an effort to

balance those two issues is to say that it is enough if the juror is told that the effect of finding only aggravating factors, that the effect of finding no evidence of any mitigating factors, means that you are concluding beyond a reasonable doubt that death is the appropriate penalty and so long as the jury as a body is sensitized to the fact that the practical effect of their conclusion regarding aggravating and mitigating factors is a conclusion that death is the fitting and appropriate penalty, that that sensitization is all that is required to balance the competing interests and that it is not necessary to have them specifically take a second step that gives them the option of nullifying the legislative intent. That's my problem with the verdict sheet.

THE COURT: And with the substance of the charge that goes with it.

MR. TALASNIK: Yes, Your Honor.

THE COURT: Do you have any other issues you wish to address?

MR. TALASNIK: The only other issue has to do with the Court's discussion

of intoxication on page six. It appears that Your Honor is discussing intoxication twice under circumstances where it is only specifically a part of one of the three enumerated mitigating factors.

THE COURT: No, I believe frankly that it is discussed of course expressly in number two, but the mental or emotional disturbance, I think intoxication is a fact, if it exists, that may need to be discussed in that context as well. I make the specific point there of indicating that intoxication is not the equivalent necessarily of mental or emotional condition, but insofar as that mitigating factor requires an examination of the totality of his intellectual and emotional processes at the time that he acted, emotional and intellectual processes is something they may consider in that context as well. I'm reasonably comfortable with that concept. The mitigating factor does not equate with intoxication, but intoxication is a circumstance, if it exists, that the jury may properly evaluate in determining whether the

evidence of that mitigating factor exists, as well as the second mitigating factor which is expressly bottomed on intoxication.

MR. TALASNIK: My problem is that there is one mitigating factor that expressly refers to intoxication as a considerable component and that by specific reference to intoxication in the second mitigating factor or -- mitigating factor number four, I believe, as it appears in the legislative formulation, that that is the manner in which the legislature determined to deal with intoxication insofar as it relates to a mitigating factor that to discuss it in the context of a second mitigating factor permits a double counting, if you will, and that's the basis of the State's problem with that.

THE COURT: Okay, is that all you have?

MR. TALASNIK: Yes, Your Honor.

THE COURT: Mr. Preston, what I would like you to do is first respond to his, then we'll deal with yours.

MR. PRESTON: Thank you. I'm

surprised at Mr. Talasnik's last words as double counting because the cases that have come down from the Supreme Court, we've been complaining about double counting of aggravating factors and the Court has been telling us it's all right.

THE COURT: I frankly don't need to hear from you on the intoxication issue unless you agree with Mr. Talasnik. I would rather hear from you on the analysis of the aggravating, no mitigating.

MR. PRESTON: I just want to make one comment. First, I agreed with him, but last night as I thought it over I came to see that I was taking a very superficial look at what was said by the two aggravating factors and what was important was that they were two different standards. One was sort of a diminishment of capacities and the other had a different application. The second aggravating factor where intoxication is specifically mentioned --

THE COURT: Talking about aggravating or mitigating factor?

MR. PRESTON: I'm sorry, mitigating factor. We've had a long trial here.

THE COURT: So you're talking about intoxication. Let me just indicate to you, you may if you choose, but unless you agree with Mr. Talasnik or have some other different problem with my formulation, I'm going to leave my formulation alone.

MR. PRESTON: I'm going to leave it alone. First I thought it would be a little confusing, then I saw the wisdom of the Court's charge.

THE COURT: Talk to me about aggravating and no mitigating.

MR. PRESTON: The problem is this. Mr. Talasnik is offended by the specific language in the verdict sheet that says at the bottom of page three or in the middle of page three, do you unanimously agree that death is a fitting and appropriate punishment. The motion was made by the Public Defender's Office in State versus Ramseur that the jury had to be asked that question. The Supreme Court ruled that it

didn't have to be asked that question. It did not say and did not prohibit the court from asking that question. The case seemed to imply that in the facts of Ramseur and in such cases as that, the question need not be asked and perhaps should not be asked, but that isn't to say that in some cases, in some specific instances it does need to be asked and what I'm suggesting is in the framework posed here on page three where there are aggravating and mitigating --

THE COURT: No mitigating.

MR. PRESTON: No mitigating, the question does need to be asked for this reason. Mr. Talasnik speaks of jury nullification. I've made my motion before, I'm not going to reargue here why each aggravating factor should be seen as having two components. If it's been decided in Mr. Talasnik's favor, the reason is the aggravating factors are strictly fact-finding procedures. What Mr. Talasnik is saying is, ladies and gentlemen, in your fact finding, when you're fact finding alone, your mechanical fact finding comes up with a death

verdict, you should go back and think about the consequences of death and nullify your fact finding because you don't like death. That's the problem with the logic that he's presenting.

Now, if we were doing my original proposal he might have great grounds for contesting this particular phrase, but the way he's already prevailed on the fact finding issue, he can't prevail here because no matter what happens --

THE COURT: Let me interrupt you only because I'm not sure that the record -- I don't remember anymore what's in and what's not. I know what you're talking about, I'm not sure the record does, so let me belabor the record for just a moment to explain in case it wasn't there because I have a feeling that most of the discussion that you're talking about that we had was done in chambers and indeed at some length. Earlier, and it may be of record and if so I'm wasting time, but earlier in the proceeding when we discussed this, in theoretical terms Mr. Preston took the view

that the process of finding the aggravating factor, that is to say whether it existed beyond a reasonable doubt, included the evaluative or normative aspect, to wit in making its determination of the fact of the existence of the aggravating factor the jury was required to simultaneously assess the impact or weight of the facts in determining whether those facts were significant enough to constitute an aggravating factor. Mr. Talasnik took the position with which I agreed and agree, past and present tense, that in fact the process of finding the aggravating factor first turns on a fact question where in the case of these two aggravating factors, and for that matter most of them, they are basically fact issues.

Dealing with the fact that the defendant purposely or knowingly create a grave risk, did in fact the defendant have as a purpose in committing the murder the avoidance of prosecution or trial. Those are facts and in my view and I believe in the State's view the jury's initial approach in determining the existence of aggravating

factors is purely factual. Did these facts exist beyond a reasonable doubt? Once you say that the process of determining the existence of aggravating factors is factual rather than factual/normative, then the logical conundrum is presented, what do you do if they have found the fact, find no mitigating factors and therefore fall into the trap that many of the cases point to, which is to suggest that the ultimate decision making process is not simply factual, but rather requires an extensive normative impact. That's the background, I believe, Mr. Preston, for the remarks that you made.

MR. PRESTON: That is as succinctly stated as I can think of, Judge, and the bottom line is that I think that the only escape from that and still to conform with the requirements of Bey is that someplace the jury has to make a normative judgment that we're reduced to putting it here. The Court knows my preferences. My preferences are on the record, but if they're not to be followed, at least we have to have

this much.

THE COURT: Okay, let me just close it out. I'm going to stick with what we have here. I will tell the Supreme Court if it reads this record right now that this individual judge, tenured as of today, finds great difficulty with the language on page 64 of volume 112 in Bey II, and I will tell you that I am not at all clear as I think I should be in this determination. I think this is the closest to what Bey is talking about. I agree that if you take the position that the finding of aggravating factors is primarily if not exclusively factual, that there still has to come a time when you must weigh and evaluate the aggravating factors even in the absence of mitigating factors to determine whether the jury believes death is the fitting and appropriate penalty.

In that respect I cite not only the language of Bey, but also as I have previously referred to counsel language that comes from the Gregg decision of the United States Supreme Court to which Bey refers, and specifically I refer to page 193 of the U.S.

Reports, which is at 49 Law Edition, page 886, citing the original draft of the model penal code pointing to the quote in there, it is within the realm of possibility to point to the main circumstances of aggravation and of mitigation that should be weighed and weighed against each other when they are presented in a concrete case. The words "and weighed against each other" are in italics in the original as well as in the Supreme Court opinion, but the careful distinction in that language between weighing and weighing against each other means that, as we all know, there has to be some structured process not only to weigh the aggravating against the mitigating, but also to weigh the aggravating and obviously separately to weigh the mitigating, and if you're not going to do that, as I don't believe you should in the part of finding the fact, then you must do it after you have found the fact.

The reason, by the way, that I don't think that it makes logical sense to do it as a part of finding the fact is that if indeed it is a simple fact, and again the two

I have here are factual, did he create purposely or knowingly a grave risk of death, that's a fact. It's a jury question. It's not subjective. It is capable of objective determination. If they find it, they may or may not conclude that it is sufficiently serious so as to constitute an aggravating factor and therefore theoretically there are two choices. I could tell them, first decide if it exists as a fact, then whether you find it to be sufficiently weighty and serious to be an aggravating factor. I could charge it that way, but to a, way of thinking that is a more complicated and logically difficulty concept for a lay jury to appreciate than first to decide the fact of whether it exists, and then separately to decide if it is a fact whether it suffices by itself or in connection with the only other factors which are aggravating to justify the conclusion that that is the fitting and appropriate penalty.

The language in Bey suggests that emphasizing that aggravating and no mitigating is the equivalent of finding death

would suitably direct the belief of any juror about the inappropriateness of the death penalty to one or more mitigating factors. I struggled with that language for three weeks. That seems to suggest that if the jury has already decided that they have no evidence of mitigating factors, should they, if they find that they're uncomfortable about the death penalty, go back and manufacture a mitigating factor. I think that makes less sense than asking them do the aggravating factors that you have found have enough weight and significance by themselves to justify the conclusion that death is the fitting and appropriate penalty. I recognize and clearly indicate for the record and counsel and the Court that there is no decision, Bey or otherwise, that says I'm right. I understand that and if anything I'm pleading for that kind of guidance for future judges. Be that as it may, for the reasons indicated we will proceed in the construction as outlined. Now, you have other issues.

MR. PRESTON: But for the completeness of the record, one of the things

that came out in chambers is that I did take the position that in the first aggravating factor here, grave was a qualitative decision, it wasn't strictly factual. Grave was a question of how much, how substantial, how serious, so I also took the position that with respect to the purpose of the murder in discussing the purpose and principal purpose and primary and all of that, that those were also qualitative and relative judgments and that was a position that I disagreed with the Court on and I just say that for the completeness of the record.

THE COURT: And my response then and now is that the jury could well decide that the gravity of the risk was immense, the most grave risk; yet notwithstanding the gravity of the risk, that that risk, more grave than any other they could imagine, is still not sufficient to justify the conclusion that the death penalty is appropriate. It's a different -- if in fact the determination of gravity is subjective, which I'm not sure I agree with, but if it is, it's a different question that

they're being asked. All right, you may proceed with your other comments.

MR. PRESTON: On page two the charge in brackets, we would request the Court to give the first charge in brackets, the failure to testify. With respect to the next paragraph, the second charge in brackets, the instruction on parole we would request that the Court not give that instruction.

THE COURT: Those two instructions are both in there at the defendant's election. I will therefore charge the first and not the second. What do you think about the question of whether I need the defendant personally to request me to make that first paragraph charge?

MR. PRESTON: I think not, Judge. When the defendant was present he made the election to be absent from the courtroom, knowing, and we asked at that time I believe that Your Honor give the instruction that his absence was not to be taken for or against him. This charge is perfectly consistent with that charge and

calls to the jury's attention no more than the first charge did, and I think not to give it would be unreasonable right now.

THE COURT: I have every intention of giving it, I want to give it.

MR. PRESTON: In terms of his decision, Judge, I think that there is no reason to question his wishes given what's happened so far.

THE COURT: Mr. Talasnik, on that point.

MR. TALASNIK: Your Honor, it's a parallel to the issue that arose yesterday where the defendant made an application to absent himself. At that time the State didn't object to it, the State didn't consent to it. The State merely indicated to the Court -- strike merely. The State indicated to the Court that the State's concern is with the integrity of the court proceedings and the integrity of those proceedings as they may be viewed by any appellate process, and the State's concern is that the record is made as clear as it possibly can be made that Your Honor has questioned the defendant

personally and that Your Honor is satisfied that there was a knowing and intelligent waiver by the defendant. The more times that occurs, I think the better protected the record is in the event of a review by any level of appellate process. In order to guard against the specter of a defendant claiming on appeal that he did not or that his counsel did not communicate accurately with him or did not accurately communicate to the Court that which was the defendant's personal point of view since these are rights personal to the defendant, I think that it is appropriate to have the defendant produced in person prior to giving this charge so that he can express his views.

THE COURT: I agree with both of you and that leads me to the conclusion --

MR. PRESTON: He'll be here anyway, Judge, by the time you charge.

THE COURT: Well, my plan had been frankly to have him brought over and to get here by the end of the charge. What I'm going to do instead is, sheriff, ask you to

have him here by 1:30. I will not be charging before lunch anyway. It will only take five seconds to bring him in and ask him to do that, so please make a note of that. All right, Mr. Preston, you may proceed.

MR. PRESTON: On page four, the bottom of the second paragraph, there is the language you should keep in mind that this is a different question from whether the defendant purposely or knowingly attempted to kill or injure Sullivan. I made an application to strike the aggravating factor. I believe that this language should also be stricken, that even if the aggravating factor is appropriate, this language is not correct and not correctly stated.

THE COURT: Let's assume for the moment that the aggravating factor is appropriate, what's wrong with this language?

MR. PRESTON: I believe that that expression in appearance invites the jury to reconsider the verdict that they already rendered, invites the jury to

reconsider whether or not he purposely attempted serious bodily injury. When I was discussing attempted serious bodily injury before, we were talking about intent, the purpose, and talking about the bodily injury being contained -- serious bodily injury containing in it the risk of death, but bodily injury not. They've already acquitted him of not intending bodily injury. Here you're asking them to reconsider.

THE COURT: I think what I'm doing is telling them expressly that they should not reconsider that. I think what I'm doing is differentiating the issue and saying this is not a matter of whether he did that or not.

MR. PRESTON: I suggest that at the very least the intent to create risk of death, intent to create risk of death was decided by the jury last week, the intent. What I understood from Your Honor's explanation in rejecting my application was that what the jury didn't decide is whether he knowingly created a risk of death.

THE COURT: That was one of the

two bases. I said there were two, one of which was that the jury never reached a question of knowingly, that's what I said when we came back from lunch, but earlier in the dialogue I had said that in my view the attempt to inflict serious bodily injury and the creation of a grave risk of death are two different concepts.

MR. PRESTON: Well, Judge, at this point --

THE COURT: For example, let me give you a hypothetical. You're standing right next to Mr. Davis at the moment. Suppose I take out a gun and intending to have the bullet come close to you so that you get scared intend to shoot Mr. Davis. Do you follow me? It's my purpose and with knowledge to shoot Mr. Davis, it is also my purpose to have the bullet come close enough to scare you, but it is my express purpose not to hit you.

MR. PRESTON: I'm not following any of this, Judge.

THE COURT: You can think about that one later.

MR. PRESTON: My position remains that at this point, after working last night on this matter, I am not in a position to make all sorts of fine analyses and distinctions. I can give you my reaction that something in there is very, very wrong compared to the jury's verdict and that this charge is inappropriate. Now, those fine distinctions I can't make for you right now, Judge. I went to bed at twelve o'clock last night.

THE COURT: I understand. You had me beat. What's your next point? On that one, Mr. Talasnik, do you desire to be heard?

MR. TALASNIK: The only thing of interest is that Your Honor referred to purposely or knowingly attempting to kill and as the Court ruled yesterday an attempt requires a purposeful state of mind. Perhaps the only correction that's necessary if any at all is striking the words "or knowingly" on the third line from the bottom of that paragraph.

THE COURT: Actually if you're

going to strike, you should strike it all because intent does require purposeful conduct.

MR. TALASNIK: It could say whether the defendant attempted to kill. Instead your focus is on whether he purposely or knowingly created.

THE COURT: Right. To that extent, Mr. Preston, your application is granted. I'll strike purposely or knowingly. All right, next issue, Mr. Preston.

MR. PRESTON: I understand what the Prosecutor has proposed on the issue we just touched on. I still maintain my objection.

THE COURT: I understand.

MR. PRESTON: On the next issue, on page six, the verdict sheet reflects the language insufficient to constitute a defense to prosecution. The charge also indicates insufficient to constitute a defense to prosecution with respect to the first mitigating factor. I have a problem.

THE COURT: First and second.

MR. PRESTON: First and second. I have a problem with the language. It is concisely put there in the statute, it is efficient and it is well workable for lawyers to use, but it's conciseness and its juxtaposition in terms of instructing a jury I think are very much of a problem. It can be confusing in the sense that since they're only going -- since they're going to have it read to them once and they're going to have this compact word in front of them once, it's easy to perceive that insufficient -- since it wasn't sufficient to constitute a defense they don't find it here. It has that confusing quality to it.

I think that, number one, it should be stricken from the verdict sheet, the language should be stricken from the verdict sheet. Number two, I think that the Court should not use the concise words of the statute. I think this is one of the dangers when they talk about using the words of the statute in the mitigating factors, don't use those words, but read it as it will be on the

verdict sheet and then make an explanation of how this is different from those type of things which are argued with intoxication and heat of passion before. I think that's very important. Do you want me to proceed to the next point?

THE COURT: Mr. Talasnik, do you desire to be heard?

MR. TALASNIK: No, thank you, Your Honor.

THE COURT: Yes, proceed to the next one, Mr. Preston.

MR. PRESTON: On mitigating factor number three, I have submitted to the Court --

THE COURT: You haven't yet, you showed me.

MR. PRESTON: I'll ask it to be marked and submit it to the Court now and I have a copy for Mr. Talasnik.

THE COURT: Just submit it to me, Mr. Preston. You showed me earlier today and you're giving me now a proposal which makes the following five specific requests with respect to delineation of the third

mitigating factor.

MR. PRESTON: The proposal which I submitted, the first page, the correction that I propose there the Court has already made with respect to the word "that." The only other change from the Court's proposal was that I took the very last sentence out of bold type. That was all. Insignificant.

THE COURT: I generally made it consistent here that anything that is an instruction to the jury or explanation is in bold type and the questions are in regular type.

MR. PRESTON: I'm not pressing the quality of the type.

THE COURT: The five specific delineations are, A, abandonment of the defendant by his mother; B, the psychological and physical abuse in the defendant's childhood; C, defendant's physical health history; D, age of the defendant at the completion of the required incarceration; E, any other factor which is relevant to the defendant's character or record or to the

circumstances of the offense.

MR. PRESTON: I would ask that those be separately listed on the verdict sheet. Your Honor has only listed the general factor, H. I'd ask that under three, which is the general factor H, that these subdivisions be made for the jury's verdict and consistent with that I would ask that on page six of the proposed instruction --

THE COURT: Page six? I think it would be at page eight where I discuss in the second full paragraph the content of the third mitigating factor.

MR. PRESTON: I'm at page six over here where you have those three factors. I just want to say that at that point the Court could list and give a breakdown of the mitigating factors.

THE COURT: I'm going to give the breakdown in the charge, but I perceive that it is more appropriate where after I list the mitigating factors I then explain each of them.

MR. DAVIS: I understand, but what I'm saying is on three here, there's a

list, but I think what you've done in the explanation later on, perhaps -- yes, page eight, in that area, that this list of mitigating factors would have an explanation also.

THE COURT: Well, okay, I'm going to do it at page eight at the end of the second full paragraph, it starts, the third mitigating factor, and I'm going to do it by listing these five items that you have identified here as you've identified them in a statement that starts something to the effect of, the defendant has offered evidence relating to, and then I'll list the abandonment of the defendant, et cetera, each of the five and I'll say something at the end to the effect of all of which together with any other evidence you should consider in evaluating whether there's evidence of this mitigating factor.

MR. PRESTON: The other thing that I have is in Ramseur, the factor, the evidence was presented as to the defendant's age, he was a middle aged person and the argument was made that with his middle age,

the length of the sentence would keep him incarcerated probably till death. The Supreme Court said that that was not appropriate to list with the age factor, that it should be listed with H. I would ask that we not specifically speak of the defendant's potential for rehabilitation, but rather speak of it in terms of that specific aspect because we're not arguing a whole bunch of other rehabilitation potentials. We're just arguing that aspect.

THE COURT: Do you want me to strike the reference to potential for rehabilitation?

MR. PRESTON: Yes, strike that because we're only arguing one aspect of rehabilitation and I think the general instruction --

THE COURT: I will strike the words in that printed sentence after the word crime and I will add, as I said, a sentence that reads in effect, the defendant has offered evidence relating to, and then I'll list the five separate components and then all of which together with all other evidence

should be considered in determining whether this mitigating factor has been established.

MR. PRESTON: We would take the position that the Court's instruction should be more explanatory than merely the listing, which is why I was contrasting the listing under three on page six and the next page.

THE COURT: What would you suggest?

MR. PRESTON: I believe that some comment on the scope of what was testified to would be appropriate. It does not need to be lengthy. It could be comments as simple as in the third mitigating factor, you've heard evidence that the defendant's mother left the children and the defendant was no longer with his mother for the rest of his life. In that respect you may consider the abandonment, rather than just use the short word abandonment without any explanation of what the abandonment is about. I think that is too much of a shorthand so there should be a short referral to what the evidence is and then what the label is that we've attached to it. Merely

to list the labels is insufficient.

THE COURT: I think that's the difference between your role and mine. I do not intend on either side of the issue to comment extensively or even at all on the extent or quality of the evidence. I intend to refer the jury's attention to it which I think is my proper role. I think that my comment addressing to their attention these five particulars is appropriate and sufficient. I think in summation you have the opportunity as well as the responsibility to fill in that gap.

MR. PRESTON: Clearly, Judge, we disagree.

THE COURT: Okay, you do your thing and I'll do mine.

MR. PRESTON: On page six at the bottom, in the explanation of the mitigating factors describing extreme mental or emotional disturbance, you have, "influenced him to commit the murder." Now, as I read the statute, the influence refers to the mental or emotional disturbance. Under the influence of mental or emotional

disturbance, such as under the influence of alcohol. There is no causation that's required. You need not prove that the alcohol, for example, in any defense when we say under the influence of alcohol, caused him to do an act. The law doesn't require that type of thing when they describe under the influence of. It merely requires that the alcohol be present in a certain form. In this way here, in this factor here it merely requires that the mental or emotional disturbance be present in the extreme form. The act need not be caused by it. It need only have been present to the extent that it influenced him. The causation is another issue. I think it's a separate issue.

THE COURT: So you don't want me to strike influenced him, you want me to strike to commit the murder.

MR. DAVIS: Yes, that's correct.

THE COURT: How about instead of saying influenced him to commit the murder, how about influenced him at the time the murder was committed? There has to be

some relationship.

MR. PRESTON: Can I suggest this. Strike the second line from the bottom up to the period, and the sentence now reads, this mitigating factor is established by evidence showing that the defendant was suffering from an extreme mental or emotional disturbance and at the time that the murder was committed he was under the influence of that disturbance.

THE COURT: Well, it's going to do the same thing. The disturbance influenced him at the time of the murder. Striking to commit and inserting at the time of.

MR. PRESTON: Certainly Your Honor's language is an improvement in your discretion. I'm not wholly satisfied, thank you.

THE COURT: I understand. That's part of life, Mr. Preston.

MR. PRESTON: I object to the word violent change on page seven, eight lines down, by disturbance I mean agitation, confusion or violent change. I don't think

that disturbance requires that there be any type of internal violence in his thinking. Confusion, frustration, all of those things can be a disturbance. I don't think there's evidence in this case of any violent brain activity inside. Certainly the act was violent, but when I think when we say violent change, that is not appropriate to this case and I think it's misleading to the jury to interject it. I would ask that the words violent change be struck.

THE COURT: Mr. Talasnik.

MR. TALASNIK: I don't wish to be heard. Thank you, Your Honor.

THE COURT: I don't have a major problem with that, Mr. Preston. I'll do it.

MR. PRESTON: Again the last sentence of that first paragraph, influenced him to commit the murder is the same problem --

THE COURT: Influenced him at the time of.

MR. PRESTON: On page eight you've already struck the rehabilitation in

the center of the page. If Your Honor is not going to put in the jury sheet the proposed additions concerning the specifying of aggravating factors --

THE COURT: I'm going to put them in the charge, not in the verdict sheet.

MR. PRESTON: I was going to suggest an alternative proposal and that is that in State versus Jamie Barone, capital murder case in I believe Morris County --

THE COURT: I'm familiar with it.

MR. PRESTON: In Morris County, Judge Collister agreed to leave a space under mitigating factor C in which the jury could put down those factors that it found. The jury did so and I would ask that if the Court is not going to accede to my first request, that the jury be allowed in this case to have a space in which to put their determinations as to the specific aspects of mitigating factor H that they found. I've noted in some of the opinions, not all of the opinions certainly, that there have been some questions by the Court as to what the jury

did find or did not find with respect to aggravating and mitigating factors. I believe that this approach is the minimum to address that concern.

THE COURT: Again I'm not happy with that. I'm not responsible obviously for the defendant's interest, but I think it's less in the defendant's interest to do that than to do it this way. I think a charge that enables the jury to be somewhat more flexible rather than a verdict sheet, some juror for example might be reluctant to identify himself publicly as the only juror who finds evidence of a specific group three mitigating factor.

MR. PRESTON: Their names are not on the jury verdict form.

THE COURT: In the end when we poll them, as I have to indicate to them that we will, when we get down to mitigating factors and ask them if they are in fact in agreement that this mitigating factor exists, to the extent that we get down to that point I think it's inappropriate to specify which of the other factors they find are not. I

think it's sufficient to instruct them as I have here that any of these is sufficient to constitute the mitigating factor and that they don't have to particularize.

MR. PRESTON: I would object to any polling of the jury which asked any juror to specify what factor he found or didn't find. I think that the question asked should be the same question that's asked in any criminal case; does the verdict sheet reflect the way you voted?

THE COURT: You can't because you can do that in any verdict sheet where the verdict is unanimous. Whereas this is the only place that I know of in our criminal jurisprudence that the verdict does not have to be unanimous, how do you leave room for a juror who has not found a mitigating factor? There is an awkwardness in that that we have not yet discussed, but the fact is that the unique aspect of this verdict sheet, in every other verdict sheet the answer must be unanimous.

MR. PRESTON: I tend to disagree.

THE COURT: We'll discuss polling at another time.

MR. PRESTON: I think since it was part of Your Honor's reasoning on this application --

THE COURT: Irrespective, we're going to leave it the way it is, Mr. Preston. Next issue.

MR. PRESTON: The issue that I was addressing arose at the bottom of page eight and specifically for the record I was requesting that the language enumerated on the verdict sheet be added at the end of the sentence, the paragraph at the bottom, the paragraph beginning, you should consider in mitigation.

THE COURT: I'm not clear what you're asking.

MR. PRESTON: If any of you considers that there is evidence of this nature, that is a mitigating factor in this case, you should identify that evidence in this part of your discussions and enumerate it on the verdict sheet.

THE COURT: That's what you

already asked.

MR. PRESTON: I'm referring to the verdict sheet, I'm saying that I want that in.

THE COURT: I understand. Next issue.

MR. PRESTON: The other issue is that that language in the same line fails to reflect the fact that the jury is not restricted to just the penalty phase or to any particular part of the first phase of the trial in finding mitigating evidence. It is free to search the entire testimony of this trial without restriction. That's the language of the cases, in search of mitigating factors.

THE COURT: I have told the jury that.

MR. PRESTON: My second objection with that line is that that line was misleading as to that issue.

THE COURT: First line, same paragraph addresses that issue.

MR. PRESTON: Thank you, Judge. I have no further comments to make, Judge.

THE COURT: Okay. As I said, when the jury is out please remind me and we will discuss questions relating to polling of the jury which I have forgotten to mention until now, but which have caused me distress in preparing, because I'm mindful of the fact that it's something unusual. All right, are we ready then to proceed with the testimony of Doctor Dyer?

MR. PRESTON: Your Honor, a couple of things. One, the Prosecutor and I have agreed on a stipulation of facts, part of which relates to Doctor Dyer's testimony, so I present that to the Court.

THE COURT: Stipulation is that the defendant was born on August 10, 1957 and that the letter was seized in a valese along with other personal property of the defendant on April 26 at the Atlantic Palace, had been left there on April 25 at 10 o'clock by Highlander. Those facts are indeed stipulated, gentlemen?

MR. TALASNIK: Yes, Your Honor.

MR. PRESTON: Yes, Judge.

THE COURT: Okay, I will

present them to the jury now, that is when the jury comes in. D-18 is going to be admitted into evidence, Mr. Talasnik, and offered, Mr. Preston, or not?

MR. PRESTON: Yes, it can be, Judge. I was going to cover it either that way or with specific references in the testimony, but I think I'll offer it.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Well, Judge, I have a problem with the letter being admitted into evidence. I recognize that the rules of evidence generally don't apply to the submission of evidence in support of mitigating factors. However, to me there are substantial problems with authentication that go to the point of making the document unreliable and irrelevant. There has been --

THE COURT: May I see it, please? Go ahead.

MR. TALASNIK: There has been no indication that the letter was written by the defendant, there has been no indication that the letter was signed by the defendant,

there was no indication as to when the letter was written, there is no indication that the letter was ever sent and there is no indication as to whether it was intended to ever be sent. We don't know who wrote it, when it was written or for what purpose.

MR. PRESTON: Judge, why don't we wait till the doctor testifies? I suspect that Mr. Talasnik's objections are divided into two categories. Number one, they go to its weight in terms of how much of what's in there is truthful or meaningful, that type of thing, and that's a question for the jury to decide, even in a guilt phase trial. The other part is its admissibility in terms of authentication, in terms of whether he wrote it, and I suggest to you that the Prosecutor can't tell you in good faith that he doesn't believe that the defendant wrote it, that even though it's unsigned and undated it was seized before the murder was committed. We are not making any claim that it was sent. We are not making any claim that it was attempted to be sent. All -- the only real basic fact is did he write it and since it

was seized in his briefcase, since everything the Prosecutor has done so far has been consistent with the presumption that it was his product, I think that he can't contest it on that ground and I won't move it into evidence now, I'll wait till after the doctor's testimony and then make my decision.

THE COURT: I've read the letter. Anything further at this time before we bring the jury in?

MR. TALASNIK: Yes, Judge, one matter. With respect to the tape, very early on in the tape there is an introduction by the questioner that refers to her having been employed by or being paid by the Office of the Public Defender. Sometimes in some cases courts have a problem with and defense lawyers have a problem with references to the Office of the Public Defender somehow prejudicing a jury against a defendant. To the extent that this Court or this defense counsel would have any problem, I simply bring it to the Court's attention.

MR. PRESTON: I've discussed that with the interviewer, already. I've

reviewed the tape and had to evaluate it. I don't think that it's a problem right now. I don't see any issue to be raised by it. Perhaps it's better not to be, it's a better course of action --

THE COURT: I'll permit you if you want to excise it.

MR. PRESTON: My problem is I don't want to present to the jury something that's edited. May I have one moment to discuss this again with Mr. Davis, Judge? It's a close call.

THE COURT: Yes. I would simply point out that yesterday Ms. Alfonso, when she testified, made several references to working for the Public Defender.

THE COURT: I understand that, Judge, and I think that it is not a problem in this case, not to say that we wouldn't raise it in some other situation, but not a problem in this case.

THE COURT: I also point out that this is evidence being adduced by the defendant. All right, sheriff, get the jury. Doctor Dyer, you may return.

F R A N K D Y E R, HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: Okay, ladies and gentlemen, good morning. Sorry we're a little bit late. As you will remember, Doctor Dyer is testifying. We interrupted his testimony yesterday afternoon. We'll pick it up in just a second, and Doctor, I remind you, you're still under oath.

Ladies and gentlemen, very briefly, I have two facts or a couple of facts which are the content of a stipulation. I don't remember frankly whether in the first phase of the trial I referred to stipulations. If I did you'll forgive me in that I'm going to repeat myself a little bit. Sometimes there are facts that the parties agree the jury may consider to be facts even though there's no evidence of them. In general, of course, as you know you can only consider what you hear evidence of. Sometimes there are facts that the parties agree may be submitted to the jury even though there is no specific evidence. That

is called a stipulation. In this case there are a couple of facts I'm going to present to you. The facts that are being stipulated are not necessarily more or less important than any other evidence. You may consider them together with any of the other evidence that you receive. How important you consider the stipulated facts is up to you.

The facts are as follows. First, that the defendant Richard Highlander, Jr. was born August 10, 1957. Second, that the letter identified yesterday as D-8 you may remember was a yellow handwritten letter, was seized in a valese along with other personal property of Richard Highlander on April 26, 1988, that is the day after the murder, at the Resort Development Company at 1515 Boardwalk, known as the Atlantic Palace. The briefcase had been left there by Richard Highlander at 10 o'clock a.m. on Monday, April 25, which was the day of the murder, at 10 o'clock in the morning. Okay, Mr. Preston, you may proceed with Doctor Dyer.

MR. PRESTON: Thank you,

Judge.

DIRECT EXAMINATION (Continuing) BY MR. PRESTON:

Q. Doctor, were you retained to make an evaluation on an individual, Richard Highlander, Jr.

A. Yes, I was.

Q. And who retained you to make that evaluation?

A. The Office of the Public Defender.

Q. In making that evaluation were you provided with documents for your review?

A. Yes, I was.

Q. Did those documents include statements of an individual named Rufus Duff?

A. Yes.

Q. Do you remember what kind of documents they were?

A. As I recall they were statements that Mr. Duff made to the police and to the Prosecutor's Office and also I reviewed Mr. Duff's trial transcripts.

Q. Do you recall statements by or any information that was provided with respect to a Mickey Chambers or Edward Chambers?

A. Yes.
Q. Were they statements of a similar nature or documents of a similar nature?
A. Yes, they were.
Q. And were they also trial transcripts?
A. Yes.
Q. What about Judy Bryars, an individual by that name, did you review information concerning her?
A. Yes, I did.
Q. And was that information of a similar nature?
A. Yes.
Q. What about individuals, an individual named Tim Mooney?
A. Yes.
Q. What was the nature of that information?
A. I reviewed Mr. Mooney's trial transcript. His testimony I do not have with me, and also some handwritten notes on legal paper that Mr. Mooney had made, Officer Mooney rather.
Q. What about individuals Robert Brooks, Michael Reed, Stephen Hayward, Richard

Stewart, did you review any information with regard to them?

A. I reviewed a number of statements by these individuals.

Q. And did these statements that you're referring to also include trial transcripts?

A. Yes.

Q. Do you know, exclusive of the trial transcripts, for the most part what was the source of the statements or the reports on those four individuals?

A. As I recall these were statements given both to the Atlantic County Prosecutor's Office and to the Public Defender's Office.

Q. Did you have the opportunity to review any reports or statements by Judy Ellenbogen?

A. Yes.

Q. How about Jennifer Saitz?

A. Yes.

Q. Brian Abruzzi?

A. Yes.

Q. In these items that you reviewed, did these include reports by the Prosecutor's Office also?

A. Yes, they did.
Q. In other words, there were some reports by the defense investigator?
A. Yes.
Q. What about trial transcripts, did your review include any trial transcripts of these individuals?
A. Yes.
Q. Now, with respect to an individual, Moishe Shinar, do you recall reviewing any reports or information?
A. Yes, I reviewed a police report on Mr. Shinar and also Mr. Shinar's trial transcript.
Q. Do you recall reviewing any information about an individual named Tyler Fitzgerald?
A. Yes.
Q. And what kind of information did you review concerning her?
A. These were statements to the Prosecutor's Office and complaints signed by her, by her father or brother and by a male friend of hers by the name of Chris Ford. These were complaints against the defendant

Highlander.

Q. Were they connected with the charges that are the subject of this trial, those complaints?

A. No.

Q. Did you have an opportunity to review any records concerning Richard Highlander, Jr.?

A. Yes.

Q. What kind of records did you review?

A. I reviewed some Florida school records of Mr. Highlander and also a report of an investigator who interviewed Mr. Highlander's third or second grade teacher, Ruth Scobey.

Q. What about statements that may have been made by the defendant himself, by Richard Highlander, Jr. in connection with these charges, were you able to review any of those statements?

A. Yes, there were several confessions that Mr. Highlander offered and as I recall these were both to FBI personnel and to the Atlantic City (sic) Prosecutor's Office, as well as some transcripts of taped interviews with investigators of the Public Defender's

Office.

Q. In connection with your evaluation, your psychological evaluation of Richard Highlander, Jr., did you conduct a personal interview with him?

A. Yes, I did.

Q. What did that consist of? How did that transpire?

A. That consisted of my entering the jail for the purpose of seeing him, he had been advised that I was going to come to Atlantic County to interview and test him. Mr. Highlander was escorted into the room by two corrections officers. I introduced myself, shook hands, I asked him to take a seat. I asked Mr. Highlander if his attorney had advised him that I was coming to see him. He said that he had been so advised and that he had nothing to say to me. I then asked him,, then you do not wish to be examined today, and he said that he did not. At that point the interview was concluded.

Q. Without an examination of Richard Highlander, Jr., is it still possible to make any kind of psychological evaluation of him?

A. Yes.
Q. How is that possible, Doctor?
A. It's pbssible in this case because my evaluation of Mr. Highlander is based on rather thorough documentation of the events that led up to this trial, events of the crime, as well as a social case history that was prepared by Alfonso Associates under the direction of Ms. Cecilia Alfonso, who is a clinically certified social worker, and further these clinical case history reports were amplified by a videotape of a rather lengthy interview with the defendant's mother which was also conducted by Ms. Alfonso.
Q. Would it be preferable to have an interview in order to make your evaluation?
A. An interview with the subject, certainly.
Q. And do you feel that your evaluation is questionable or in any way significantly impaired because of the failure of an interview in this case to take place?
A. There are certainly many unknown factors that arise from the absence of a direct interview with the subject, but in

terms of addressing the specific referral questions that were posed to me by the Office of the Public Defender, it is my opinion that my evaluation has not been significantly compromised by the absence of a direct interview and testing of the subject.

Q. Ordinarily with the refusal of a subject to be interviewed or submit to an examination, would that signify anything to you in terms of the results of your examination?

A. Yes.

Q. And what things would it signify?

A. The most common reasons for an individual's refusing to be evaluated are either that they perceive the examiner as somebody who is working against them, and this has happened to me in the past in my work with parents of children who are under the supervision of the Division of Youth and Family Services, these parents tend to see me as somebody who has been hired by DYFS to get them. Such was not the case with Mr. Highlander who was clearly advised that I had been retained by his attorney, the office

that was representing him in this legal matter.

The other chief reason for a subject's refusal to be evaluated psychologically is the threat that very highly emotionally charged material that the subject has been struggling to keep out of conscious awareness will be brought up as a result of these psychological procedures, and that I believe is what was operating with Mr. Highlander in his refusal to be examined and interviewed.

Q. Could you give us some specific facts, specific information that in your review of the materials that lead you to that conclusion about Mr. Highlander in this case?

A. Yes, Mr. Highlander's history was an extremely traumatic one. I'm talking about his childhood history. I would say that of the children who are referred to me by DYFS for child abuse, that Mr. Highlander's case would range among the worst ten percent of cases that are referred to my office by DYFS.

Specifically the events that I

think were the most problematic for him in terms of any kind of self disclosure to a psychologist involved witnessing the brutal rape of his mother by his father and simultaneous physical abuse of his mother by his father when he was four years old, according to his mother's statement on the tape, the fact that he was threatened by his father with a gun at the age of five and forced to plead for his life. Also the fact that his father further intimidated him throughout childhood according to the statements of his sister to Alfonso Associates by throwing knives at him and other family members as well, and also the fact that this individual who, according to statements in his confessions and so forth and statements of Alfonso Associates, presents as a very tough macho kind of person, the fact that this individual suffered from bed wetting, from nightmares and from daytime loss of bladder control as a child, and I believe that all of these things that I have mentioned were so emotionally loaded for Mr. Highlander, so embarrassing

and humiliating and rage provoking that he did not want to disclose them in an interview with me.

Q. Do you feel then that the evaluation which you make in this Court today is reliable?

A. Yes, I do.

Q. Is it done according to the accepted standards and practice of your profession?

A. Well, it's the accepted standard and practice of the profession of psychology to have an interview and examination wherever possible. Absent that, certainly there is ample precedent within the profession of psychology for drawing conclusions in response to specific referral questions from professionally prepared data, such as the data that were available to me.

Q. Speaking of that data, did you review an interview that was conducted with Richard Highlander, Sr. and his wife, Gladys?

A. Yes, I did.

Q. And could you relate to us some of the significant information that you may have considered in that interview?

A. According to the interview with Mr. Highlander, Sr. and his second wife, Gladys Highlander, who was Richard Highlander's step-mother, Richard Highlander had nightmares, he wet his bed and according to his father he urinated in his boots up until the age of seven years. For a child to exhibit these symptoms up to the age of seven indicates an enormous degree of anxiety that is certainly a clinically significant problem that should have been addressed through some kind of therapeutic intervention, which evidently was not.

The father, interestingly enough, denies being an abusive parent and this is quite normative in my experience in working with abusive parents. It's interesting to compare his denial of any abusive behavior towards his children with the statements of his first wife, the defendant's mother and the defendant's sister. Mr. Highlander, Sr. also indicated that as early as age fifteen Mr. Highlander was using drugs, further that as a teenager he was very jealous of his girlfriends, and

that's a quote from the report of Alfonso Associates, and that in fact when one of these girlfriends rejected him, he physically assaulted her and as a result of this assault he was committed to Coral Ridge State Hospital, which is a psychiatric facility in the State of Florida.

Q. How would that be significant, Doctor?

A. That's significant in that it indicates that from a rather early age, that is from this defendant's teenage years, he had a pattern of extreme jealousy and physical assaultiveness toward women. This pattern was so disturbing in fact that when he was in the twelfth grade that it reached proportions where his parents felt that he should be committed to a psychiatric facility, which is certainly a major step for a family to take in dealing with a child's problems.

Q. Is this something that given your review of all the other documents that you would see any connection between his experiences with his father's treatment of his mother, for instance, and how he behaved

in his teenage years and later on in life?
A. Yes, it's my conclusion based on my review of the social history and also of the videotape that Mr. Highlander's way out of the extreme anxiety, to the point of terror that was caused by his witnessing these brutal acts of his father upon his mother, his way out of that, his means of psychological survival was to form a pathological identification with the aggressor, as the term is called in psychoanalytic psychology, that is to say that he made himself like his father, he identified with him whole cloth rather than simply selecting aspects of the father's behavior that he found to be acceptable and desireable qualities to identify with. This is a pathological identification in which he became psychologically the brutalizing parent with the infantile logic; if I am like you, if I become like you, then you can't harm me. It's a kind of magical thinking that was this young boy's way out of the terror caused by these assaults upon his mother that he saw committed by his father.

Q. Did you review any interviews or reports of conversations with one Lucy Webb?
A. Yes, I did.
Q. And could you tell us about those reports and what information you found there and what was the source of those reports?
A. Yes, the source of these reports was again Alfonso Associates and these were based on telephone interviews that were conducted in the early part of May. Ms. Webb indicates that while she was married to Richard Highlander, Sr., she took continuous beatings from him, that Mr. Highlander, Sr. was very brutal toward her and she remembers one occasion where he broke her finger while in the act of raping her in the presence of Richard Highlander, Jr. She noted in this telephone interview that the incident clearly upset the child and that when Richard Highlander, Jr., then age four, told his father to stop or begged his father to stop is the term used here, that the father slapped him and told him to shut up, and subsequent to that incident and other incidents that also involved brutality, Ms.

Webb ran away from Richard Highlander, Sr. and she was so depressed that after running away she had to receive shock therapy.

Ms. Webb also noted that she was able to regain custody of her daughters, but that Richard Highlander, Sr. kept Richard, Jr., the defendant, because he was his name sake, but Ms. Webb also notes that Richard Highlander, Sr., and these are her words, did not want Richard Highlander, Jr. He was just being mean to him, and Ms. Webb also in these telephone interviews makes the observation, you know, Richard is who he is because of his father, and she states that he learned to be mean to women because of his experiences with his father, and as she puts it from seeing how his father treated me and Gladys, Gladys is his step-mother, Richard Highlander, Sr.'s second wife.

Q. Did you have the opportunity to review any information that would indicate how Richard Highlander, Sr. had actually treated his second wife, Gladys?

A. I'm looking through the documentation here. There was an interview with Lonnie

Savage that I believe speaks to that and that's what I'm searching for now. Lonnie Savage, who is Richard Highlander's full sister, indicated, and this is also in the telephone interview that was conducted in April by an employee of Alfonso Associates, Patricia Mitchell, Miss Savage indicated that she recalled her father pointing his gun and throwing butcher knives at the children and also that when she located Gladys, the stepmother, and her father years later, years after she left the home, that she found that the father had caused Gladys -- I'm sorry, this is a reference to the defendant rather than the father.

Q. Were you ever made aware of any court proceedings between Richard Highlander, Sr. and Gladys?

A. Not that I can recall from the documentation.

Q. I show you what's been marked D-19, ask you if you've ever seen this before?

A. Oh, yes, this is one of the documents that was submitted to me by your office.

Q. Does that refresh your recollection as

to any other information you might have considered concerning Richard Highlander, Sr. and Gladys?

A. Yes, it does. This is a restraining order that was applied for by Gladys Highlander, the second wife of Richard Highlander, Sr., and it states that the petitioner, that is Gladys Highlander, does in fact fear for her life and personal well being and the well being of the minor children of the parties and has just cause to believe injury and fear. It seeks a restraining order against Richard Highlander, Sr.

Q. Then would you say that there was some attention given to this document in discerning the relationship between Richard Highlander, Sr. and Gladys?

A. Yes.

Q. Did you receive any information through Alfonso Associates concerning the health, physical health of Richard Highlander, Jr. during his childhood?

A. Yes, I did.

Q. And what information did you receive

there?

A. According to the report of Alfonso Associates, Richard Highlander, Jr. suffered from a congenital heart condition. In fact his mother said to one of the investigators at Alfonso Associates that she nearly lost him when he was two months old. Richard Highlander, Jr. had many heart problems, many symptoms related to his heart condition throughout his infancy and in fact his mother was extremely concerned that he was not receiving adequate medical care.

She did ultimately find a pediatrician who [illegible] able to prescribe something that alleviated these heart symptoms that were so distressing to her. The point here is that Richard, Jr. was Lucy Webb's, then Lucy Highlander's sick child whom she tended to baby and to be extremely preoccupied over. Further the report from Alfonso Associates indicates that Richard Highlander, the defendant, underwent a cauterization of the narrow heart valve at age fourteen, and that was due to his congenital heart condition, and also that he

had open heart surgery in 1985 and this open heart surgery was for the purpose of replacing the defective heart valve.

Q. Were there any particular instances in Rick's childhood that you found from the interview materials that his mother was particularly distressed over with respect to that heart condition, any particular symptoms or occasions of physical reaction that she might have been concerned with?

A. Yes, around the age of four or five months the infant, Richard Highlander, had spells of turning blue around the lips. Now, I have to make clear that I'm not rendering any kind of medical opinion here, I'm speaking from my experience as a school psychologist in reviewing case files of children who were referred to me who had these symptoms, but from that point of view this raises a red flag for organic brain damage because the blueness around the lips --

MR. TALASNIK: Your Honor, I'm going to request that that testimony be stricken as beyond the scope of this

witness. He is not a medical doctor.

THE COURT: Mr. Preston.

MR. PRESTON: He is not testifying as a medical doctor, Judge.

THE COURT: I understand, but I don't think that I can permit him to speculate in front of the jury. I don't think there's a foundation.

MR. PRESTON: May we approach?

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: The doctor will testify later on concerning an explosive -- an intermittent explosive disorder. He will testify about psychological evidence of that disorder. He will also testify that in the psychological diagnosis of that disorder you look to incidents in the medical history that would be indicative, not a diagnosis that he's made, but things that other doctors have said and that's what he's looking for here.

THE COURT: There's nothing in this record at this point that permits that conclusion. If he has access to or there is evidence of some medical diagnosis upon which

he relies to make a decision, that's another thing, but I won't permit him to sit up here and tell this jury that he thinks --

MR. PRESTON: He didn't say that. He said it raises the possibility.

THE COURT: I'm not going to permit that.

(The sidebar conference was concluded).

MR. PRESTON: For now I withdraw the question.

MR. TALASNIK: The application is that Your Honor instruct the jury to disregard.

THE COURT: Ladies and gentlemen, at this point you will not give any consideration to any suggestion of any particular medical condition of the defendant unless and until there is evidence that would permit you to do so. You may proceed.

MR. PRESTON: Judge, does that include the interview with his family that he had been treated at various hospitals, that he had had an operation and all that other stuff?

THE COURT: No, it does not. That of course may be considered as there is some evidence that has been presented to you that would enable you to consider it. You may proceed.

MR. PRESTON: Thank you, Judge.

BY MR. PRESTON:

Q. You indicated also that you had reviewed a report of an interview with Lonnie Savage.

A. Yes.

Q. And you indicated a few things she said. Were there other items that were presented to you in her interview that you felt were significant in making your evaluation?

A. Yes, Lonnie Savage indicated that she remembers the father pointing his gun at the children and throwing butcher knives at them, that he would abuse Lucy Webb, then Lucy Highlander, the defendant's mother with his hands and also throw kitchen knives at her. The children would get scared and cry and in particular Richard Highlander would cry, and that this abuse happened almost daily or

every couple of days.

Q. Did she recount to you any problems that her father may have had with substance abuse?

MR. TALASNIK: Your Honor, I'm going to object to the form of the question. This witness never personally interviewed the witness so the form of the question, whatever Lonnie Savage related to him is improper.

MR. PRESTON: I withdraw the question. The Prosecutor is correct, it was phrased inartfully.

BY MR. PRESTON:

Q. In reviewing the interview that was conducted with Lonnie Savage, did she relate to the interviewer any information concerning Richard Highlander's substance abuse?

A. Yes, she did. She indicated that her father, Richard Highlander, Sr., had great problems with drinking, with alcohol abuse.

Q. And did she recount any specific instances of that to the interviewer?

A. From what I can gather from the fact that she relates that Mr. Highlander had a very serious drinking problem, Mr.

Highlander, Sr., and that the abuse occurred almost daily or every couple of days, that many of these instances of abuse were associated with intoxication.

Q. In your profession, Doctor, is it the practice to review and rely on reports prepared by professional social workers in obtaining such histories and such documentation?

A. It most certainly is.

Q. Is it routine?

A. Yes.

Q. Is it the kind of thing which the profession feels -- reliable and trustworthy to do?

A. Yes.

Q. With respect to the quality and the information that was provided to you in the report done by Alfonso associates, how would you characterize the quality and the amount of information with which you were provided?

A. I'd say that this is a very high quality social case history and I do not see any flaws in the technique or in the way the material is organized.

Q. Do you feel comfortable and confident in relying on those reports in making your evaluation?

A. Yes, I do.

Q. Now, Doctor, have you reviewed any information concerning Ms. Frangione, Mr. Gerald, Diane DeLuigi?

A. Yes.

Q. What kind of information did you review?

A. There is mention of Ms. DeLuigi, who was Richard Highlander's wife, actually she's Diane DeLuigi Highlander, there is mention of her in the Alfonso Associates' report. With respect to Tyler Fitzgerald, there are complaints against Mr. Highlander signed by Ms. Fitzgerald and her relatives and also a male friend of hers and also a statement by Ms. Fitzgerald recounting her relationship with Mr. Highlander. Insofar as Miss Frangione is concerned, I reviewed a supplemental report of the Atlantic County Prosecutor's Office reporting an interview with Miss Frangione by an Investigator Young.

Q. With respect to the information on Ms.

Frangione and Ms. Fitzgerald, what was the source of that information? Was it from defense counsel or was it from items prepared by the State from police officers or the Prosecutor's Office?

A. It was the latter, items prepared by the State.

Q. And they were in connection with other offenses that were not the subject of this trial?

A. I conclude from the date of the Frangione interview that that had indeed been conducted in relation to the -- to the present trial.

Q. But what about the circumstances and the events recounted in the report, do they have a relationship to this trial?

A. No.

Q. Now, when you reviewed the original records, I believe you had described Richard Highlander, Jr.'s treatment of a girlfriend for which he was being treated at that institution and when you reviewed the reports concerning Ms. Fitzgerald and Miss Frangione, were you able to gain any insight into Rick

Highlander, Jr.'s pattern of behavior in his relationship with women?

A. Yes, I was.

Q. What insight were you able to gain?

A. Mr. Highlander is an individual who suffered an extremely traumatic and emotionally deprived childhood which left him with a number of very deep emotional scars. He attempted to heal some of these scars in a very pathological way through his relationships with women.

The pattern was as follows. Mr. Highlander would become involved with a woman, his agenda for her was apparently to supply him with all of the affection, acceptance, approval and emotional security of which he had been deprived in his childhood. This is an impossible task for anybody so he was setting himself up to fail. The relationship would typically go through a honeymoon phase where Mr. Highlander idealized the woman, would treat the woman with respect and consideration and would look to this woman as somebody who could solve all his problems and then when it

became apparent that he had not found the person who was going to solve these problems for him, and as I indicated nobody could because these were voracious emotional needs that he had, then he would become disillusioned and frustrated and because of this disillusionment and frustration he would engineer situations in which the woman would be provoked into rejecting him.

This was something that he himself set up through his possessiveness, his demandingness and his general impossible conduct toward these women, and when the reaction was elicited, the reaction that he consciously or unconsciously had precipitated in these women, then they would in fact reject him and at that point he would become enraged and violent, physically assaulting these women and also threatening them and threatening their families.

In the case of the young woman by the name of Susan Sharp who was the object of such behavior when Mr. Highlander was 17 years old, the typical pattern manifested itself and in fact Mr. Highlander took out a

gun and threatened to kill himself, and from what I gather from the Coral Ridge reports he actually discharged this weapon, so here was an instance in which you had this enraged reaction when a woman rejected him after he became excessively possessive and demanding and the use of the firearm, and Mr. Highlander's stated goal here was for Susan Sharp not to back out of this relationship, not to reject him and we see this pattern repeated with the other women involved.

Now, with Susan Sharp there was no threat of going to jail. With these other women, with Frangione and with Tyler Fitzgerald, there was the same pattern as had occurred with the victim, Ms. Simonelli, that these women had been assaulted by Mr. Highlander and he threatened to kill them if they should press charges against him. That's true for Tyler Fitzgerald and for Miss Frangione.

Q. Were you able to review any reports about things such as the defendant's employment evaluation or school records or things of that sort?

A. Yes, I reviewed both his employment evaluations and some school records from Florida.

Q. Now, were these records complete, fragmentary, very minimal, what was the level of completeness of these reports?

A. I would characterize them as incomplete records.

Q. In fact what did they actually consist of, Doctor?

A. The employment record that I reviewed consisted of an evaluation by a supervisor I believe at Harrah's where the individual, Richard Highlander, was employed as a window washer and Mr. Highlander received a satisfactory evaluation except that he would fail to show up for work periodically, unpredictably, and also had some problems in getting along with others, but basically his evaluation was good. I do not recall other employment records on Richard Highlander. There is a notice of unsatisfactory performance from Harrah's addressing the problem of Mr. Highlander's failing to show up at work.

Q. So these were just a couple reports from a couple of brief periods of time with regard to his employment?

A. Yes.

Q. And you don't know anything about his employment during the rest of his life?

A. No.

Q. What about his school records?

A. There are some school records from various schools in Florida and basically what they are is a listing of Mr. Highlander's grades. Doesn't really provide a well rounded picture of this defendant in terms of his adjustment to the school.

Q. With regard to his school experience, did you have anything else that might have been in some way helpful to you in looking at Mr. Highlander?

A. Yes, there is an interview with one of his teachers, a Miss Scobey.

Q. What did that interview relate insofar as what she told the interviewer?

A. Miss Scobey was Richard Highlander's second or third grade teacher and she reported to one of the investigators that

Richard Highlander was a very disruptive student in her class and that interestingly he came back to visit her as a teenager. She was quite surprised because she said it's usually only the good kids, in quotes, who come back to visit a teacher and he informed her that the purpose of his visit was to apologize to her for having caused her such trouble in the third grade.

Q. Did that play -- was that an item of great significance in making your evaluation, Doctor?

A. I wouldn't characterize it as an item of great significance, but it does give some insight into the psychological make up of this defendant as a teenager.

Q. Now, you also indicated that you reviewed some medical records, is that correct?

A. Yes.

Q. And what medical records did you review, Doctor?

A. I reviewed medical records from the Coral Ridge Psychiatric Hospital covering the psychiatric hospitalization that was

discussed previously, I reviewed a letter from the Atlantic Mental Health Center concerning a visit which Mr. Highlander made to them in 1985 for the purpose of seeking some kind of counseling or therapy, I have records from the Atlantic County jail concerning the defendant's medical condition upon being admitted, there is a prescription for the Atlantic County jail by a Doctor Coletta for Benadryl and Motrin, this is for Mr. Highlander, and the indication is that he was to be on these substances for three days because of drug withdrawal.

Q. What was the date of that prescription?

A. That was -- there were two actually, one was May 14, 1988 and the other May 15, 1988. I also have records from the Shore Memorial Hospital and I believe these cover an ankle and foot injury that Mr. Highlander sustained in a domestic dispute with the victim.

Q. What were the dates of those medical records or the dates of treatment there, Doctor?

A. You'll have to bear with me because it's difficult to locate the date on this handwritten document. March 18, 1988 is the date of the radiological report indicating a fracture of the ankle.

Q. Did you review any subsequent reports concerning Mr. Highlander's heart condition?

A. Yes.

Q. And what reports were those?

A. I have reports from the Deborah Heart and Lung Center.

Q. And what happened with regard to treatment of Mr. Highlander at that institution?

A. Mr. Highlander underwent a heart valve replacement at that institution in 1985.

Q. Do you know if there are any residual effects from the procedure?

A. No, I don't.

Q. Now, with regard to -- I believe you testified you had a report from Coral Ridge Psychiatric Center. While he was there was any diagnosis made as to Mr. Highlander's mental condition?

A. Yes, Mr. Highlander's diagnosis was

explosive personality and there's also a note from the psychiatrist to rule out schizophrenic reaction.

Q. Now, this was at Coral Ridge?

A. This was at Coral Ridge Psychiatric Hospital and the date of the summary here is 5/1/75, this was when Mr. Highlander was hospitalized after assaulting Susan Sharp and threatening to kill her family.

Q. You also indicate that you reviewed a report by the Atlantic City or Atlantic County Mental Health, is that correct?

A. That's correct.

Q. And in that report did they relate to you the length of treatment or the number of times they saw Mr. Highlander?

A. There was no treatment. This was simply an intake interview where Mr. Highlander complained of a deteriorating relationship with a woman with whom he had been living for about two years, and I believe this was Tyler Fitzgerald. He said that she had recently moved out because of violent arguments, one of which lead to her getting stabbed and he was seeking treatment

to adjust to this. However, he did not keep any follow up appointments so there was only this initial intake interview on which the information was based.

Q. Now, this recounting of this initial intake interview, this was prepared when?

A. The screening interview took place on 10/10/85 and the letter reporting the results was dated May 12, 1989.

Q. To whom was the letter addressed?

A. Letter was addressed to Robert J. Moran of the Public Defender's Office.

Q. And does the letter purport to answer an inquiry by the office?

A. Yes.

Q. The actual event itself that's described in the report took place how long before the letter was sent?

A. Took place in 1985, so it would be nearly four years.

Q. Despite the single interview that was conducted, was the mental health center able to make a tentative diagnosis as to any disorder, mental disorder, disease or defect that Mr. Highlander would have had at that

time?

A. Yes.

Q. And what diagnosis did they make?

A. The preliminary diagnosis was intermittent explosive disorder.

Q. Was this the same diagnosis that was made at Coral Ridge?

A. Essentially, yes. The Coral Ridge diagnosis was explosive personality disorder. Now, the Diagnostic and Statistical Manual, third edition, of the American Psychiatric Association which is widely regarded as the standard diagnostic manual among psychiatrists and psychologists, indicates that a mild form of intermittent explosive disorder, which is the diagnosis of the Atlantic Mental Health Center of Mr. Highlander on 10/10/85, a milder form of that was formerly known as explosive personality disorder so this is essentially the same disorder.

Q. The disorder as it was tentatively diagnosed -- strike that, please. Based on all your reports that you were able to read, all the information that was provided to you,

were you able to make any kind of diagnosis as to Richard Highlander's mental condition with regard tb any defect or disorder or disease?

A. Yes.

Q. And what diagnosis were you able to make?

A. My diagnosis of this individual is also intermittent explosive disorder.

Q. When you say disorder, is that the same thing as a mental disease?

A. Yes, it's the current term for mental disease.

Q. So the old [illegible] would have been disease in the profession and the new term is disorder?

A. Yes.

Q. Is that distinct from a mental defect?

A. Yes.

Q. Is that distinct from something like a personality disorder?

A. Yes.

Q. Would a personality disorder be considered a mental disease or disorder?

A. No, it would not.

Q. So in fact this mental disease or disorder of intermittent explosive disorder is like a mental illness?

A. Yes.

Q. Is this a very common thing, this disorder?

A. No, it's a rare disorder.

Q. Something that not very many people would have?

A. Yes, that's correct.

Q. Well, how do you distinguish between this disorder that you say that you diagnosed in Rick Highlander and the ordinary person who just has a quick temper, who just flies off the handle for things?

A. Intermittent explosive disorder refers to a condition in which an individual reacts violently and explosively in a manner that is completely out of proportion to the precipitating factor.

Q. When you made your disorder, your diagnosis of this disorder, did you find that there was anything in the reports about Rick's childhood, an event that happened that would tend to confirm the diagnosis that you

made?

A. Other than the explosive assault on Susan Sharp?

Q. Well, something in his early childhood perhaps, some physical condition or event that he suffered that his parents or his sister might have observed?

A. As I stated before, his mother observed that he would turn blue around the lips at the age of four or five months. Now, I don't presume to make any kind of medical diagnosis --

Q That's enough, Doctor, you can stop there.

MR. TALASNIK: Objection.

BY MR. PRESTON:

Q. So that that physical condition would have been consistent with your diagnosis of the disorder, is that correct?

MR. TALASNIK: Your Honor --

THE COURT: Sustained.

BY MR. PRESTON:

Q. In the field of psychology, do you have occasion to include in your mental evaluations the observation of physical

conditions of those people who you are examining?
A. Yes.
Q. Is this a common thing?
A. Yes.
Q. Routine thing?
A. Yes.
Q. Generally relied on in the profession?
A. Yes.
Q. You do not purport by your using these observations to make a medical diagnosis as to any medical condition, do you?
A. No, I do not.
Q. But they are things that are routinely used in your profession to make evaluations of diagnoses which you otherwise make based on other standards, is that correct?
A. Correct.

MR. TALASNIK: Your Honor, I want to interpose an objection and if it's going to proceed I'd want to be heard at sidebar.

MR. PRESTON: I have nothing further to add, Judge. I just finished my examination on that issue.

THE COURT: No question pending.

MR. TALASNIK: Very well, Your Honor.

BY MR. PRESTON:

Q. You indicate that the intermittent explosive disorder is listed in DSM-3, the Diagnosis Statistical Manual, is that correct?

A. Yes, that's correct.

Q. And that manual is, what is it, sort of an inventory, I don't know the exact word, of mental diseases, defects, personality disorders and things like that that your profession uses, is that correct?

A. Yes.

Q. In that manual is there described a fairly detailed description of the intermittent explosive disorder?

A. Yes.

Q. And can you give us a detailed description now of that disorder?

A. Yes, the DSM-3 description of intermittent explosive disorder is that the essential features are several discrete

episodes of loss of control, of aggressive impulses that result in serious assault or destruction of property.

Q. Can you explain that in laymen's terms?

A. The individual encounters some minor frustration that most of us would be able to tolerate without any particular reaction. For some reason due to the presence of this disorder the individual suffering from intermittent explosive disorder reacts in a manner that is completely out of proportion to the frustration and reacts by becoming violent, by exploding.

Q. This was, I believe you testified, different from the person who just has a quick temper?

A. Yes.

Q. Were there any specific instances in your review of the records in this case that would lead you to believe that that disorder was present in Rick during the time that he killed Gloria Simonelli?

A. Yes.

Q. And what was the information that you

had from these reports and from your review of the records?

A. The information that I base that answer on is that this man had a very lengthy history of unprovoked assaults on women in which he would explode with very little provocation. Further he had not had any kind of either pharmacological treatment or psychological counselling or therapy treatment to remediate this disorder and on the basis of that I conclude that this disorder was present at the time at which he committed the murder.

Q. Were there any circumstances surrounding the murder which might reinforce your conclusion in that regard?

A. Yes, intoxicants are specifically mentioned as a trigger factor in intermittent explosive disorder in the DSM-3's discussion of that disorder, and I understand from various statements and reports that I have reviewed that Mr. Highlander had been consuming alcohol in large quantities for several hours prior to the crime and that he had also consumed a mixture of heroine and

cocaine.

Q. Well, then obviously anybody who has a few beers and a quick temper has this disorder?

A. Certainly not, Mr. Preston.

Q. Is there any familial pattern associated with this disorder?

A. According to the DSM-3, the disorder is apparently more common in family members than in the general population.

Q. Now, apart from any consideration that Rick was imitating his father, would his father's behavior and Rick's behavior have any significance to you in diagnosing this disorder in Rick?

A. Mr. Highlander, Jr., the defendant, would certainly meet the criterion of having a family history of this disorder.

Q. I show you now what's been marked as D-18 and ask if you recognize it?

A. Yes, I do recognize it.

Q. And how do you recognize it?

A. I recognize this as being the original, of which a copy was submitted to me along with the other discovery in this case.

Q. Original of what?
A. The original of a letter prepared by Richard Highlander, the defendant, to the victim's parents.
Q. Now, that letter wasn't signed, was it?
A. That's correct, it was not signed.
Q. How do you come to the conclusion that it was prepared by Richard Highlander, Jr.?
A. I base that conclusion on the fact that this was included in materials that were secured by the Public Defender's Office from the Prosecutor's Office, number one.

MR. TALASNIK: Excuse me, I have to object. This conclusion has absolutely no place in the area of expertice established by Mr. Preston.

MR. PRESTON: We're not talking about expertise now. There are certain things the jury can take into consideration.

THE COURT: If in fact the jury considers the letter, they can consider whether they think the defendant authorized it. This witness is not competent to testify --

MR. PRESTON: He's not testifying to the fact. He's testifying to what he considered.

THE COURT: Doesn't matter what he considered. It was sent to him. Next question.

MR. PRESTON: May we approach?

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: Mr. Talasnik is going to argue to the jury that nobody can tell who wrote the letter. He's got to go in and blast it with full loads and the only thing I want is for this witness to be able to tell to the jury why he thought it was. If the jury thinks that his reasons for believing it were not good enough, they can disagree with them, they can throw the letter out or do anything, but at least this witness ought to have an opportunity to say why he considered it as being of any importance.

THE COURT: Are you going to dispute the authorship of the letter?

MR. TALASNIK: Your Honor, I have no way of knowing who wrote the letter.

THE COURT: Did you hear my question?

MR. TALASNIK: Well, yes.

THE COURT: What's the answer?

MR. TALASNIK: The answer is that I have no way of knowing who wrote the letter. I don't know how else to answer that.

THE COURT: Are you going to dispute the authorship of the letter?

MR. TALASNIK: Yes.

THE COURT: Objection is overruled.

(The sidebar conference was concluded).

BY MR. DAVIS:

Q. Now, Doctor, you testified the letter is unsigned and yet you feel that in making your professional judgment, you can assume that the letter was written by Rick Highlander. What is there about the letter itself that would lead you to make that assumption?

A. The letter contains an enormous amount of detail concerning the relationship between

Mr. Highlander and Ms. Simonelli and also between Mr. Highlander and Ms. Simonelli's parents that is repeated in various other documents here, and further the letter is in keeping, in character with this defendant as I understand his psychological make up to be.

Q. The letter is then consistent with what the mental output of Richard Highlander would be?

A. Yes.

Q. Now, the Judge, before you started your testimony today, read to the jury a stipulation. The letter was found in Rick's briefcase and it was left at a certain location on the morning before the crime was committed and not recovered until afterwards by the Prosecutor's Office. Did you hear the Judge read that stipulation to the jury?

A. Yes.

Q. Now, accepting that stipulation as a fact, does that play any part in your further concluding that Rick Highlander wrote the letter?

A. Yes, that corroborates my conclusion that Rick Highlander is the author of this

letter.

Q. Do you have any grounds that you can see to doubt that Rick wrote that letter?

A. None whatsoever.

Q. Was the letter dated?

A. No, there was no doubt.

Q. Despite the fact that it wasn't dated and considering the fact that it was from 10 o'clock on the morning of Gloria's murder forward out of Rick's possession, do you feel confident in making any assumptions about the time that the letter was written?

MR. TALASNIK: Objection.

THE COURT: Sustained.

Q. Did the letter have attached to it any envelopes?

A. No.

Q. Did it have any address on it?

A. No.

Q. Does it appear anywhere that the letter was ever sent?

A. No, it does not.

Q. Can you conclude that the letter was not sent?

A. Yes.

Q. Despite all that, do you feel comfortable in relying in part on that letter in making observations concerning Rick Highlander's mental condition?

A. Yes, I do.

Q. Now, are there any significant portions of that letter which are meaningful to you in making your analysis of Rick Highlander's mental condition on or about the time of the murder?

A. Yes.

Q. And what in particular might those portions be?

MR. TALASNIK: Objection. There has been no --

THE COURT: I'll see counsel at sidebar.

(The following takes place at sidebar, outside the hearing of the jury).

MR. TALASNIK: There has been no foundation as to when the letter was prepared and without that there is no relevance to the material contained in the letter.

THE COURT: Mr. Talasnik, we're

going to take a recess so you can have the opportunity to take a break and think about what you're doing here. The objection is overruled.

(The sidebar conference was concluded).

THE COURT: Ladies and gentlemen, we're going to take a brief recess at this point for a couple of minutes. Be back in about five or ten minutes.

(Jury leaves the courtroom).

THE COURT: You may step down, Doctor. Gentlemen, for the record, I forgot this morning when we were discussing the charge to put one thing on the record. So that it doesn't later appear that I didn't think about it, I want it to appear that I did and I made a decision. During the course of the first phase of the trial there were two pieces of evidence that came in under limiting instructions. They both had to do with some testimony of Detective Teasenfitz. It's not necessary to now go into them. The record reflects what they were. I am under the obligation as I understand it to

re-examine at this phase of the proceeding whether any limiting instruction should be so limited.

Given my view that the testimony that was the subject of the limiting instruction is not properly and directly related to the content of the evidence before the jury at this point, and it has been and is my determination not to refer to the material and unlimit the instruction because I don't think it's material that it directly bears on the issues that are before the jury in any event. I say that simply so that the record reflects that it is an act of commission rather than omission that there is no instruction to the jury.

(Whereupon a recess is taken).

(Jury returned to the courtroom).

THE COURT: Mr. Preston, you may proceed.

BY MR. PRESTON:

Q. Doctor, I want to return to a question we didn't get a chance to get the answer for

a little bit ago. About the time that that letter was written, the date or the time period, you heard the Judge in the stipulation say that the letter was in the briefcase, the valese, that Rick left at the Atlantic Palace at 10 o'clock in the morning on the day of the murder and that it was seized by the Prosecutor's Office, and assume that an agent of the Prosecutor's Office had kept it in their possession up until today and also consider the fact that the letter was unmailed and undated. What sort of conclusions did you make about the time period that the letter was written in considering also its contents?

A. I concluded that this letter was written during a period subsequent to Mr. Highlander's eviction by Miss Simonelli during a time when he was attempting to reconcile with her.

Q. And were there items in the letter that lead you to believe that?

A. Yes.

Q. Did you refer to any specific items along those lines?

A. Statements such as the one on the first page of the letter toward the middle, I think the whole mess has gone totally out of control.

Q. Does he talk about getting back together with Gloria again at anyplace in the letter?

A. Yes, would you like me to find an exact quote or just rely on my recollection? There is a reference on the fourth page to her parents possibly visiting her and finding her with other men rather than with Mr. Highlander and that the victim, Miss Simonelli, would never find happiness with another man and so forth, many statements indicating Mr. Highlander had been rejected by Miss Simonelli and that he wished to return to her.

Q. Who is the letter addressed to?

A. The letter is addressed to Gloria and John.

Q. Now, from the contents of the letter, were you able to discern or make a judgment for purposes of your examination on who Gloria and John were?

A. Yes, they were the parents victim.

Q. Now, was there anything that significant about the letter that pl part in your evaluating Rick Highland mental condition during the time perio which he killed Gloria?

A. Yes, there were a few things. Fi on page two there is a statement to the effect that Mr. Highlander never had a fa who gave a shit, that's a quote. This corroborates many of the things that were stated in the interviews with Alfonso Associates, that this is an individual who had undergone a considerable degree of rejection and other trauma early on in life.

Now, there is another statemen on the second page of this letter that talks about Mr. Highlander's having spent Christmas with the family of the victim and I'll just read it. It says, "Christmas time was so important to me. Your family made it very nice for me." This suggests that not only was the relationship with the victim important to Mr. Highlander, but that there

CORRECTION

PRECEDING IMAGE HAS BEEN REPEATED TO ASSURE LEGIBILITY OR TO CORRECT A POSSIBLE ERROR

A. Yes, they were the parents of the victim.

Q. Now, was there anything that was significant about the letter that played a part in your evaluating Rick Highlander's mental condition during the time period in which he killed Gloria?

A. Yes, there were a few things. First on page two there is a statement to the effect that Mr. Highlander never had a family who gave a shit, that's a quote. This corroborates many of the things that were stated in the interviews with Alfonso Associates, that this is an individual who had undergone a considerable degree of rejection and other trauma early on in life.

Now, there is another statement on the second page of this letter that talks about Mr. Highlander's having spent Christmas with the family of the victim and I'll just read it. It says, "Christmas time was so important to me. Your family made it very nice for me." This suggests that not only was the relationship with the victim important to Mr. Highlander, but that there

was another dimension to this, that Ms. Simonelli also had a family who were concerned about her, who cared about her and who enfolded Mr. Highlander into their family circle for a time, so he was able to have a surrogate family who provided him with some of the acceptance that he never received from his family of origin.

The letter reflects this yearning Mr. Highlander had for this kind of acceptance to compensate him for the kind of voracious childhood affectional need that he had that were discussed earlier, and finally there is a statement on the third page that addresses Mr. Highlander's fantasy of rescuing the victim. The quote is, "John, I was so much in love with her and wanted to do so much for her because I wanted to change things in her life," and prior to that there was a discussion of various problems that the victim had had that Mr. Highlander purported to have helped her with. The fantasy is of rescuing the victim, stepping in, doing something to change her life for the better. What this typically means in clinical

practice is that the rescuer is doing something for himself in the person of the individual that he's trying to comfort or rescue, he is actually performing this operation for an aspect of himself and vicariously giving himself things that he was denied.

Q. Do I understand your testimony correctly that Rick not only felt the loss of Gloria's rejection, but he also compounded that with a feeling of loss about a family that he thought he would have in terms of her parents?

A. Yes, that's correct.

Q. Did you come into contact with any newspaper articles that dealt with the relationship of Gloria and Rick?

A. Yes, I did.

Q. And did that newspaper article give you any insight into the relationship from Gloria's point of view?

A. Yes, this was an article that appeared in the Philadelphia Inquirer in January of '88 that described the staging of an opera in one of the casinos, and as a sort of sideline

to this article a number of employees and patrons of the casino were interviewed and during the course of one of these interviews Miss Simonelli discussed her relationship with Mr. Highlander in which she stated in that interview which was published in the article that she felt that there was a substantial probability that Mr. Highlander was going to give her a ring, in other words, that they would become engaged.

Q. And you considered that also in making your evaluation?

A. Yes.

Q. Besides these documents which you've reviewed, did you have the opportunity to review any other material, any other thing in making your evaluation of Rick Highlander besides the documents?

A. Yes, I reviewed the videotape of Mr. Highlander's mother.

Q. I show you now what has been marked as D-10 and I ask you if you can identify that?

A. Yes, this is the videotape that I reviewed.

Q. How do you know it's the videotape

that you reviewed?

A. My initials and the date are in the left hand corner of the label.

Q. And by viewing that tape here in Court today in conjunction with your testimony, would you be able to tell us whether or not it actually reflects the interview as you reviewed it on a prior occasion and made your evaluations which were the subject of your report and your conclusions?

A. Yes.

MR. PRESTON: May we approach, Judge?

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: I understand, Mr. Preston, that you've completed now your testimony of this witness, except for the playing of the tape and his comments with respect to the tape, is that correct?

MR. DAVIS: That's correct, Judge.

THE COURT: It's 12 o'clock. We probably ought to break for lunch now. We can come back at one and play the tape. I

think it is fanciful at this point just for your own guidance, probably fanciful to think that we can complete the case today. If we come back at one and play the tape after we give the jury a brief recess or before cross examination, we would at best start cross examination of this witness at three o'clock. Given that counsel have indicated to me that combined with my own charge we need about two hours to talk to the jury and not counting any time for cross examination by Mr. Talasnik, we're already at 5 or 5:30. I think discretion would seem to suggest, as unhappy as I am about that, that we probably can expect to do no better than to complete the testimony today, close the record with respect to whatever proffers are going to be made evidentially and then sum up and charge in the morning. If at one o'clock after you've had an hour to think about it any of you has any better or different ideas, I would be enthused about receiving them, but that's my thinking at the moment.

MR. PRESTON: I will review over the lunch hour the testimony I might

have to adduce from the witness during the playing of the tape if it can be shortened.

THE COURT: Well, that's ten or fifteen minutes you have out of almost an hour and three quarters. That's not where the play is. Okay.

MR. TALASNIK: You don't want to start now, since we just got back from the break?

THE COURT: I would have to interrupt the playing of the tape for the lunch recess. That doesn't make a lot of sense, it being 12 o'clock and the tape is an hour and a half and I won't keep the jury till 1:30.

MR. TALASNIK: All right.

(The sidebar conference was concluded).

THE COURT: Doctor, you may step down. It's 12 o'clock. The next item on the agenda is the playing of the tape. As you heard, the tape is going to run somewhere around an hour and a half give or take. Therefore, what I propose to do is to recess for lunch now rather than have you wait until

1:30 or 1:45 to go out to lunch. It's 12 o'clock so I'll ask that you be back at one and we'll get started with the tape at one o'clock. I'm trying to think of how to be vague with the schedule for this afternoon without being evacuous and the bottom line is I really don't know. We may recess on time this afternoon and come back tomorrow, we may not, I don't know, I'll tell you which when I get there, but those will be the two alternatives.

In any event go to lunch, have a nice lunch, don't talk about the case, don't talk to anybody about the case and we'll see you at one o'clock.

(Jury leaves the courtroom).

THE COURT: Sometime around when we first come in the defendant will be here, hopefully if he's here before we really get started we'll bring him in, take the two minutes that will be necessary to ask about the charge, then send him back. You might indicate to him when you see him that without intending to lean on him in any way, I will for the record again indicate to him that he

has a right to be here and ask him if it is still his determination that he wishes not to. Okay.

(Whereupon a luncheon recess is taken).

THE COURT: First, gentlemen, to put on the record the discussion we just had, we haven't yet got the jury back in. The defendant we will talk to later this afternoon. We've decided I think, the attorneys and I, that the course of most prudence is to finish the testimony today, close the record and get all the evidence in, all the exhibits and what not, then recess at whatever time that is and commence closing arguments -- summation and charge at 9 o'clock tomorrow morning. I will so instruct the jury and that way we won't be operating, any of us, under any time constraints for today. I will make the necessary arrangements for lunch tomorrow. The defendant is on his way and when he gets here we'll make the inquiry of what he wants to do, so on the issue of the charge and on whether he wishes to be here tomorrow morning

for the summations and charge, which he might see differently than the testimony and he might not. Mr. Preston, you have an application.

MR. PRESTON: I want to consult with the technician one second.

MR. DAVIS: Judge, I'm going to have to stop the tape at several points and when I do there's going to be a lot of loud static from the monitors. I was going to ask if my technician can sit there --

THE COURT: He can sit wherever it's most convenient for him to be and I will instruct the jury as to that. Mr. Talasnik, can you see from where you are?

MR. TALASNIK: Yes, Your Honor.

THE COURT: Mr. Preston, you have the control?

MR. PRESTON: I'll be controlling it from the VCR.

THE COURT: We're in business.

(Jury returned to the courtroom.

THE COURT: Ladies and gentlemen, let me give you just a couple of

words. First of all, there's a young man sitting over there by the monitor that you might not be able to see which is a monitor set up for the lawyers and me. He is associated with Mr. Preston's office and will be assisting technically through the presentation. A couple of times during the playing of the tape Mr. Preston is going to stop the tape at times that he determines to do so and will at that point have certain questions to address to Doctor Dyer, then they'll pick up the running of the tape from there.

On the schedule, so that I can remove any of the uncertainty or mystery of it all, having given the matter some consideration over lunch and having discussed it with the lawyers, let me tell you what I have determined to do so that everybody is comfortable. We're going to complete the presentation of evidence today. It is my view that we will not have any real difficulty doing that by 4:30. It might be substantially earlier than that. We will rest at that point today, complete the

record, get all the evidence in, get all the exhibits addressed to your attention, then I'll send you home. We will start first thing in the morning with the closing arguments and my instructions and give you the case sometime tomorrow morning, so that's how we're going to proceed with it. I told you I would tell you when I knew. Now I know, now I'm telling you. Mr. Preston, you may proceed.

BY MR. PRESTON:

Q. Doctor, you indicate that in making your evaluation of Mr. Highlander that you viewed a videotape, correct?

A. That's correct.

Q. And that was the videotape marked as D-10?

A. Yes.

Q. On D-10, explain briefly what first appears on the tape so we can understand the setting.

A. This is an interview of the defendant's mother conducted in her home and this interview is preceded by some introductory remarks by Ms. Alfonso.

Q. And she was conducting the interview on the tape?

A. Yes, sir.

Q. To assist us in locating various points of the time, are there any marks on the tape that we will be able to observe?

A. Yes, there are hour and minute marks running continuously on the tape.

Q. Was there a date also on the tape?

A. Yes.

Q. At this time I'm going to begin playing the tape, Doctor.

(Videotape is played. Please note that questioning is by Cecilia Alfonso, the answers being provided by Lucy Webb).

Q. Good morning. My name is Cessie Alfonso, spelled C-E-S-S-I-E, Alfonso, A-L-F-O-N-S-O. I'm a social worker and today is the 5th of June. I am in the home of Mrs. Lucy Webb for the purpose of interviewing her to gain some information about her relationship with her son, Richard Highlander, Jr. I am also -- the camera person is Mr. Nick Mauluchi. He is an investigator and video expert for the Office

of the Public Defender. Good morning, Lucy.

A. Good morning.

Q. As you know, as I stated, I am here to gain some information from you about your son and your relationship with your son. I'd like to begin by asking you some questions about yourself, so could you describe your early childhood or let me say could you just tell me your age and your full name and then describe your early childhood, where you were born and describe your family?

A. Okay, first I was born in Orlando, Florida. My age is fifty one. I spent quite a few years of my early life in Florida. I was raised in an orphanage from eighteen months until about eight years of age. I have one sister and two brothers. My parents divorced when I was very young, like I said, and as far as the orphanage goes, I think the only thing I can really say about that was for me the discipline that I learned growing up, it was good and it had its bad points too. My brothers and my sister and myself, we were very, very close. We have that bond today.

My mom, during the time this happened that we were placed in the orphanage, she did the very best that she could for us in being a single parent and my feeling about my mom today is that I love her very much and I look back on it with understanding on her part. There was some resentment when you grow up, you know, you don't have -- when you look into somebody else's home you have the two parents, the cottage, the little picket fence type thing, but you -- well, I have found for myself you just don't look back on things. There is with me now no resentment. I love my mother very much and I respect her very much and I understand why she had to do what she had to do.

Q. Could you tell us a little bit about as to why she placed you in an orphanage?

A. Lack of money, there was no really support from my father, he was in the army at that time and she really didn't have a choice. She had gone to, had moved to Pensacola, Florida with my grandmother, a large family there, and bringing in four

children, you know, to feed, and herself, my grandmother, from what I understand from my mother, asked her or told her that she was going to have to do something else, the responsibility on the grandmother was just too much to bear, so my mother made the decision of just putting us in a foster care orphanage until she could financially get on her feet and we would go and visit with my mother on weekends and we would have a good time and she was the best cook I've ever -- you know, she just would fix really good food for us and she would love us while we were there.

She was very quiet I think on the reasons why and we found out later, you know, as we got older. I do know that it hurt her very deeply to do what she had to do. I had contact I think with my dad the first time when I was about six years old and he was too busy, you know, to get to know us, but over the years I, you know I made contact with him up until he died and as far as what happened between my parents, it's a thing of the past and that's basically my childhood.

Q. How old were you when you left the orphanage?

A. The last time I was about eight years old. Like I said, the discipline there, I know now that if things were brought out that I'm not too sure the orphanage, I could get a case against them as far as child abuse and things that happened. I know one incident that happened to my brother brought on my nerves that he used to wet his pants and they put a diaper on him and this was when we got older. I do remember being told that when my mother dropped us off at the orphanage the first time that I went into convulsions being separated from her. Of course I was too young to remember.

(Playing of videotape interrupted).

THE COURT: Let me just indicate for the record that on the lower left hand corner of the video that the jury is seeing, as was indicated by the doctor, there is a time and a date. The record will reflect that the video shows that the tape started I assume at local time at

approximately 9:30 a.m., give or take a few minutes, and that the date recorded on the video that is being exhibited is June 5, 1989. You may proceed.

MR. PRESTON: Judge, the time that I shut it off I believe for the purpose of questioning the doctor on the tape may also appear on the record too.

THE COURT: I didn't notice it, but it would be --

MR. PRESTON: I had 9:35.

THE COURT: I was going to say it would be close to that.

BY MR. PRESTON:

Q. Doctor, all of this background that we've heard on the tape about Mrs. Highlander herself and her brother, how is that relevant to your evaluation of Rick Highlander?

A. Rick Highlander is an individual who experienced a traumatic separation early in life when his mother left the family, and as we see from the tape the mother herself was also the victim of such a breaking of the bond with her own mother. She was placed in the orphanage at perhaps the worst time

during the early --

Q. Doctor, could you speak up? The Court Reporter is a little bit over to this side of the room and he'll need to hear you.

A. Mrs. Webb, the defendant's mother, was placed in the orphanage at perhaps the worst possible time in terms of the early developmental sub-phases and her reaction to this was rather profound. She has told that she went into convulsions on being separated from her mother at the age of eighteen months where she entered the orphanage.

Now, as we see from her anecdote about her brother, this orphanage was far from being an enlightened institution. In fact she makes a comment that were this institution with its policies to be scrutinized today, that they would probably be brought up on charges of child abuse and we see that the brother underwent a tremendous humiliation. His daytime bladder accidents were treated by putting him in a diaper, by publicly humiliating him which inflicted substantial psychological abuse as it would on any child who is subjected to

this.

Q. How does that business about the mother's brother, though, end up impacting on Rick?

A. This indicates that Mrs. Webb, the defendant's mother, was raised from age eighteen months to approximately age eight in an institution in which she underwent severe depravation, in which she had not had the experience of an attuned kind of discipline or enlightened kind of discipline. We see that Rick Highlander himself as a child experienced the same kind of bladder discontrol during the daytime that had affected his mother's brother when he was in the institution.

My conclusion about that is that in all probability Rick Highlander's bladder accidents during the day were his reaction to the same type of humiliation, psychological and physical abuse that his mother and uncle had experienced during their childhood. I think that his was to a greater degree than in this institution.

MR. DAVIS: I'm going to start

the tape up again, Doctor.

(Playing of videotape continued).

A. (Continuing) I think when I speak of resentment, the fact that it wasn't a normal childhood that, you know, you see other or think about other people having, but overall the discipline, the schooling that we got there, responsibility that we had on us, it served a purpose for me in my later -- later in my life.

Q. After you left the orphanage you went to live with whom?

A. The orphanage. Excuse me. I went to -- we went back home to be with my mother and I was there up until I met Richard Highlander.

Q. Could you tell me what year you met Richard Highlander and what were the circumstances?

A. Well, I was sixteen years old. I met him through a girlfriend of mine that introduced me to him when we went to a skating rink and like that.

Q. Do you recall how old Richard

Jukes Intake

Part II

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A-59-89T4

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
ATLANTIC COUNTY
INDICTMENT NO. 88-06-1553-C

STATE OF NEW JERSEY,

Complainant,

-vs-

RICHARD HIGHLANDER,

Defendant.

FILED
APPELLATE DIV.
JUL 11 1990
Clerk

TRANSCRIPT OF PROCEEDINGS

Mays Landing, N.J.
June 27, 1989

B E F O R E:

HON. STEVEN P. PERSKIE, JSC.

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQ.

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

MURRAY TALASNIK, ESQ.
Assistant Prosecutor
For the State of New Jersey

NATHAN DAVIS, ESQ.
AND MICHAEL PRESTON, ESQ.
Assistant Public Defenders
For the Defendant.

Gerald W. Abarno, CSR
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Highlander, Sr. was?

A. Well, he was probably nineteen, eighteen or nineteen years old. Talked to him on the phone some. We started dating a little bit and being naive like I was at the time you look back and see the control that that man had on me even then, you know by telling me, well, he wanted to have sex with me and he told me, he said, if you don't have sex with me I'm going to take this car and run it over a cliff. Well, there was no cliffs in Orlando, you know, that's the kind of pull that this man had on me and I ended up becoming pregnant and he ended up going to West Virginia to be with his mother and he wrote me a letter and told me that he wanted to marry me, and during the fifties, you know, that time of the fifties it was very shameful for a young woman or young lady to give birth to a child and not be married and I talked to my mother and she said, you know, it's the best thing for the baby, she said, you know, to marry him and to have a home for the child and so I did and we were married in Oceola County on the 15th of September in

1954 and I gave birth to my first child in March of '55, a little girl.

Q. So you were 17 years old?

A. I was 17 when I had my daughter, yes.

Q. And her name is?

A. Lonnie Jean Savage.

Q. Where were you, Lonnie and Richard Highlander, Sr. living at that time?

A. A place in Orlando on Central Avenue. Richard was in the military. The first recalling of the abuse started probably when I was about eight or nine months pregnant with Lonnie and he hit me, and after she was born it started becoming an every day thing or every other day thing, whatever. If I happened to do something that didn't please him or, you know, make a dinner right or this type of thing, if the baby cried too much, she had colic up until she was about four months old.

Q. When you said he hit you, could you describe what you mean by hit?

A. Well, he slapped me in the face the first time because a hot dog wasn't cooked like it was supposed to be and it wasn't

prepared like he wanted it to be prepared. It was a little bit too much mustard or not enough mayonnaise, whatever, I don't know really the reason why he would have gotten so angry. I mean I had everything on a plate and this type of thing for him. I went to see my mom and I told her that things were not really very good and she told me, she said, well, just, you know, don't do anything to make me unhappy. She said he might have been having a bad day or something is bothering him or whatever, and I said, all right, so I went back and then it just got really worse and I went back to my mom and I said, you know, please, let me move back in here, let me bring Lonnie and move back in here with you and she said, we had a spare bedroom, she says okay, for a little while, you know, and I said all right, so I moved back in the house with her and then Richard started going, you know, coming around to my mother's house and my mother was afraid of him, you know.

Q. When you said he started coming around --

A. He wanted to see me.
Q. What would he do and what would he say?
A. He would, you know, come up to the door and start yelling and screaming that I was his wife, that I didn't have any business not being with him and to come back and this type of thing. Well, during that time he had gone AWOL, I believe, from the service and gone back to West Virginia and it might have been -- it was that incident and he left and then I didn't see him for awhile and then he came back and it started all over again. My mother said that she couldn't put up with it. You know, he'd come banging on the door and banging 2 or 3 o'clock in the morning and we contacted the police, you know, about the incident and things like that and they said they couldn't do anything. You know, he would just come to the door and this type thing. He really was -- then he'd leave, you know. Wasn't really hurting anybody and so my mom was under a lot of pressure and I felt that it was better for her that I leave. I was trying to work. He would

harass me at work and I became more afraid of him.

Q. When you said he was harrassing you at work --

A. Harass me, he would come in and embarrass me, you know, start yelling.

Q. What did he say?

A. You know, that -- well, that I needed to be with him, that I was his wife, it was like I became a possession to him, not a person but a possession and I just was getting my family involved and everything and they were becoming afraid of him with my sister, my mother, the neighbors.

Q. When you say that you became afraid of him, what did he do that frightened them?

A. His temper, his anger, his outbursts, he would be all right until he couldn't have his way and if you would tell him no, he would become very violent with you, very, very angry and very -- he was going to do this to you, he was going to do that to you.

Q. Can you give me -- can you be more specific?

A. Threatened.

Q. What would he threaten to do to you?
A. He would threaten to kill me, he would threaten my mother's life and that's when I became -- I had to do something. I had been, was in contact with Richard's mother in West Virginia and she begged to me go back to him, he'll be all right if you just go back with him, this is what's wrong with him, he's not like that all the time, only if you would go back with him he'll be fine. At 17 years old you tend to believe the adult so I went back with him and I became pregnant, went to West Virginia, became pregnant with Rick, Jr. there and I -- the abuse there, you know, with his mother, she was a very good woman, but he also had control of his mother, you know, as far as yelling and screaming at her, threatening her and I took my child and Lonnie and I left and I went back to Florida, you know, he followed me to Florida and --
Q. Was he, when you became pregnant with Richard, Jr. and you had moved back to West Virginia, was he physically abusive with you during this time?
A. No, not really. He just would get

angry. You know, he never hit me in front of his mother that I can remember, hitting me in front of his mother. He just would do other things like when she wasn't around or we were by ourselves, you know, he would just take and twist my arm or push my hands up, you know, left no bruises or anything like that on me. He never abused me in front of her.

Q. And how often would that happen?

A. Whenever he got angry.

Q. And how often would he get angry let's say in a week?

A. In a week's time, depending on what mood he was in. Didn't take much to trigger him off.

Q. Would it happen one day a week, three times a week?

A. Couple times a week, maybe three times a week. I just became very afraid of him and it was a bad situation, you know. I just wanted to go back to Florida, be around my own family and I moved down with my mom and he started with threats again with her so I guess about that time I decided, well, I've got the second child on the way and, you

know, I made this bed, I'll do the best I can, and at that time there was no agencies like they have today to go to.

Q. You mean like Battered Women?

A. Battered Women, nothing like that. You could go to the police about it. I had him arrested once, you know, and he was in jail like overnight and that just made things worse and I don't recall when that was. I do know that that happened.

Q. Why did you have him arrested?

A. For beating on me.

Q. When you say beat on you, what did he do?

A. Beating on me, slapping, kicking, just very, very cruel, like I said before it didn't take much for him to slap me. You could just look cross-eyed and if he didn't like it he would slap you.

Q. When he would beat you, and you said he kicked you?

A. On more than one occasion.

Q. But on this incident where you had him arrested, did he hit you with an open hand, did he punch you?

A. Hit with his fist, with his fist. He would come up behind me and hit me. I wouldn't even know that -- you know, I'd think things were all right and then he'd come up behind me and just hit me in the back of the head or in my back and then of course you would turn around to defend yourself like so or get on the floor or whatever and he would just go on down to the floor with you. There was many times that I covered my head and got in a corner and I begged for mercy or I'd, you know, just leave me alone, and he took totally control of me because of the fear I had of him and I just -- I just had a horrible fear of him and then Rickey was born.

Q. Was Rickey born when you were separated from him?

A. No, I was with him at that time.

Q. And Rickey was born where?

A. He was born in Orlando, at the Orlando General Hospital there.

Q. What year?

A. That was in '57.

Q. And just so -- just to make sure that

those who are viewing this tape understand, Rickey is Richard Highlander, Jr.?

A. That's correct.

(Playing of videotape interrupted).

MR. PRESTON: I believe we stopped now at 1950 on the tape, Judge.

BY MR. PRESTON:

Q. Doctor, while you were viewing the tape were you able to make any observations about Mrs. Highlander's behavior that would help you in making your evaluations in this case?

A. Yes.

Q. And what observations could you make?

A. Well, I noted that Mrs. Highlander's demeanor was rather subdued, she was not coming across as a loud or aggressive person and she also comes across on the tape as being rather needy. I noticed that she stroked her dog for a great deal of this tape. She needed that contact comfort because she was in this stressful situation being interviewed, and as I am reading this it reflects her general emotional needs

having experienced about six years of the depravations of being raised in an institution. '

Q. How would that apply in your analysis of Rick Highlander, Jr. though?

A. I noticed in viewing this segment of the tape that Mrs. Webb, the defendant's mother, who was married to Mr. Highlander, submitted to the same kind of pattern of abuse that we note in the defendant in his history. At 1941 she says that Richard Highlander, Sr. hit her for the first time because the hot dog wasn't cooked well. It's the same patterns with the explosive disorders, a rage reaction that's completely out of proportion to some minor frustration. At 1944 on the tape, she says that she felt as though she were not a person but a possession, and we note in Mr. Highlander, Jr.'s history that he became very possessive and controlling with all of the women that he was involved with. At 1945 Mrs. Webb remarks that Mr. Highlander, Sr. was all right until he didn't get his own way, there were two sides to him, and at 1945 also she remarks

that Mr. Highlander, Sr. threatened her, threatened to kill her and also threatened her mother, which is also part of the pattern that we observed in the defendant.

Now, the fact that Mrs. Webb, then Mrs. Highlander, became adjusted so to speak to this pattern, that is she didn't leave him for good, she was back and forth and on the advice of her own mother and Mr. Highlander, Sr.'s mother, she stayed with him, she became adjusted to this pattern of abuse. On the basis of that we can infer that Richard Highlander, Jr. was exposed to one type of parental role model, a tacit individual to tries to be accomodating, who tries to avoid physical injury by doing the right thing, by pleasing the abusive partner, so that's one type of identification that was possible for Mr. Highlander, the defendant.

Q. And this would be in contrast to another type of role model that he saw?

A. Yes, this is in contrast to the abusive brutal father who is inflicting all of these things on his mother, an individual whom he perceived not only as abusive, but as

powerful. There are many developmental issues that go on early in a child's life around the time that children form their identifications that become the basis of their personality, and one of these is power. Another is psychological survival for children who are in an environment that is dangerous for them.

Q. And with these two role models Rick was then in a position where he was going to or had to choose between the two, is that correct?

A. Choose is a word that has too much of a voluntarily connotation. This is more of an automatic process. As I understand this defendant's history, for his own psychological survival, and I mean this literally so that he would not go crazy, so he would not develop a childhood psychosis, he formed a defensive self protective identification with the aggressor, with this brutal, powerful, threatening father with the childhood logic, if I become like you, then you can't hurt me.

MR. PRESTON: I'm going to

start the type again.

(Playing of videotape continued).

A. (Continuing)..... in Orlando and the pediatrician that we had at the time, at that particular time came in and said Rickey had a heart condition, he said it's not a serious one. He should out grow it. He said just, you know, watch him very closely and if you need, me you know I'm here, you'll come in for a six week check up with this child, and I followed his instructions. When I looked at Rickey I noticed that right in the chest area there was like an indentation. We were in the hospital together for like ten days, we went home and they told me that they were having trouble keeping his formula down, you know, new born babies are like that, so just, you know, watch him and everything, so I was under the impression that this child had this heart condition, that he was going to be fine.

I could not breast feed him, I tried but he wouldn't, so the pediatrician decided to go ahead and put him on formula

and they put him on goat's milk and he would lose that, he couldn't keep anything down on his stomach. I took him back to the doctor and they said, well, he wasn't adjusting good to the formula so they put him on something else and probably when he was five to six weeks old he would start turning blue around the mouth area and he would get white right around the eye and I would be on the phone with the pediatrician, we didn't have a phone in the house, I had to go across the street, and fortunately one day this doctor was booked solid and I got ahold of his partner, a doctor by the name of Hitchcock, and I took Rick in to see him and he examined him and he said this young man is very, very sick. He said he has a congenial (sic) heart condition and he said everything that's been done for him hasn't been good things and he was very much under weight. I asked Doctor Hitchcock, you know, what we could do and this type of thing and he said, you know, keep him on whole milk and to feed him a spoonful of baby cereal every hour and that's what I did and he just seemed like to come right out of it,

you know, to start putting on some weight and when he threw up, it was just like he would intake the food and then just throw it back. It was just whole milk, you know, liquid. His bowels were like, you know, real runny and I just prayed to God that he was going to be all right. The doctor felt, you know, I talked to him about putting him in the hospital and he said, you know, we'll try this first and if it doesn't work we'll do other things, and it worked. He was a fantastic physician and I'll always be grateful for him, always, and --

Q. Could you tell me a little bit about the pregnancy?

A. The pregnancy? Stressful. I was tensed up a lot. I had two children and things just became, I became a robut in a sense that my children came first, I protected those children.

Q. At that time you were living in the house with your husband and you had your mom?

A. And Richard, Jr.

Q. And Richard, Jr., and during the pregnancy it was a tense pregnancy?

A. Stressful pregnancy. If it had not been for my mother again being there, I don't know what I would have done. She would bring food over for me, for the children, she talked with Richard, Sr. and told him don't be beating on her, you know, don't hurt her. She stood up for me. He offered, you know -- he even raised his hand to my mother to hit her when she would defend me or do something special, you know, for me.

Q. You said that your mother, or excuse me, you said that your mother brought you food?

A. Richard didn't work. I went down to the welfare department to get help but they laughed at me because I had an able bodied husband. It was like I said, had it not been for my mother I don't know what we would have done. He wrote bad checks. He was put in jail for that.

Q. This was during your pregnancy?

A. No, this was after the pregnancy, afterward, after Rickey was born, and the food that I got for the kids came from my mother. She went out and bought the food for

the children, for myself, and she even had food for him, Richard, if he wanted it, but her main concern was the three of us.

Q. What was Richard, Sr.'s response to this newborn son?

A. To what, excuse me?

Q. What was Richard, Sr.'s reaction or response to his newborn son, Richard, Jr.?

A. Well, he would look at him. I don't remember him ever playing or holding him or doing very much with him. You know, maybe he was afraid of him because of what he saw before he got better as far as the throwing up. I don't ever remember him changing a diaper or making the formula or anything. I don't remember any of that.

Q. Was there anything -- you talked about Richard, Sr. being violent with you. Was there anything that precipitated the violence?

A. If he wanted me to do something, when I went back if he wanted me to do things that were not honest, that were against my principle as a person, I couldn't do it.

Q. For example?

A. For an example, conning somebody, conning, you know, the welfare department, anybody that we could, you know, get to help us out a little bit, lie for him and I just wouldn't do it. The anger with him was when things were not done like he wanted them, just as simple as that. If I was on my menstrual period and he wanted to have sex, I mean you had to submit to him and I was always raised you don't do that, you don't -- when you're on your period. I still don't believe in it, but you know, those are the things. I would be cramping and it didn't make any difference. It was -- sex was a priority with him. If I didn't -- whatever I did and if I didn't do it to suit him, no matter what, he would get very angry with me and start slapping, that he always, like he'd slap you on the face, he would come from behind and hit you, it didn't make any difference. It didn't make any difference to him whatsoever.

Q. So Richard, Jr., Rickey came into the home where there was tension and --

A. Whatever you call it yeah. Rickey

became my protector as he got a little bit older. I remember times that the violence would happen and he would come hold my hand and tell me that he loved me, that I'd be all right, you know, and as Rick got -- let me just explain something here about the children. As far as the discipline with their father, if my children were to do something that displeased their father, I took the blows for it and I mean that I did not want the father to hit those children. I did not know what he might do to them and I just got myself in th.. ..ay to prevent him from hurting the children and they were not bad children. They were good children. You know, as far as getting into things in the house, they didn't do it. As far as being rowdy, they weren't. They appreciated anything that you did for them.

We moved into a home way, way out in the country, I mean we're talking sticksville, and Richard, Sr. had a job in a town called Bipollow (phonetic) which is also the country but nothing compared to where we lived, no phone, no refrigerator, it's in a

snake infested area.

Q. How old was Rick then?

A. I would say probably about three and a half, four, maybe four. I got pregnant with my last child by this marriage, Barbara, and no transportation. We had one neighbor which was a little distance from the house and she and I became friends. I never told her of the violence that went on in the home. First, I was embarrassed. First, I was hoping that it would all go away. Second, it was embarrassing, and Richard, Sr. started carrying on an affair with this woman and to the best of my knowledge she gave birth to a son for him and during the time that we were in this home Richard, Sr. was in an automobile accident on his way home from work and I called his mother. His partner, Lawrence Hyatt, came out to the house about 8 o'clock one night and told me that Richard had been in an accident and that he was in serious condition and I remember going into the closet and shutting the door. I have no -- I don't know why and I gathered my children up, the three of them at the time,

and went to my sister's in Orlando for her to take care of my kids and I went to the hospital and the police were still there. A 17 year old boy had come off, run down off a gully and come back on to the street and hit Richard, Sr.'s car on the right side and damaged him up pretty bad and I got to the hospital, I went to the hospital, you know, I stayed the first night all night long. They said they didn't think that he was going to make it.

I called his mother from the hospital to come from West Virginia and she told me that she didn't want to and I said, well, Nellie, why. I said, this is your son. She said, I just can't, and I said, please, you know, I need somebody to help me here, I said, he's your son, don't you want to see him and let him know that you're here, this type of thing. Well, he was unconscious for, you know, in and out of a coma they said for awhile, you know, and they wanted me there with him in case he did come to and that there would be somebody familiar there, so I sat by his bed like a dutiful wife and

did what I could and I remember him coming -- he was coming awake and he was calling for me and I let him know that I was there and he asked me to stay there with him and I did, and he went back to sleep or whatever and he told me that he was afraid and I stayed with him and finally I left to go get a bath, change clothes and get something to eat.

This was like a couple of days later and I went back into the hospital, there was blood all over the ceiling of the hospital and his eye where they had to go in there and wire it had burst and I thought that he was dead or had died and he was in surgery, and after that he was in a body cast from here all the way down, stomach cut open, you know, to where he could eat, laying in a traction. He was just a mess and we -- I began -- I had the responsibility of three children then and an individual that I had to take care of night and day, so Lawrence Hyatt moved us to a motel residence type thing in Bipollow where it would be more convenient for stores and anyone else that could give us

a hand and whatever and Richard, Sr. was on a hospital bed type thing. Rick, Jr., Lonnie and myself were in one bed and then Barbara was in her crib.

Q. How old was Barbara at the time?

A. Well, she was tiny.

Q. And Barbara was born when?

A. Well, I jumped the story here a little bit. I went from my house in -- no, I didn't either. We went from the hotel to another home there, Rick began to see a lot of violence in his father. He gave me -- what I wanted to tell you about Rick and Lonnie and I, one night after Richard had thrown his food on the floor, just taken it, whoosh, on the floor and screaming and hollering, you know, and this man even in the condition he was in still managed to pitch fits and show his temper. You know, it was just a never ending thing with him.

He would -- I would put him on a bed pan until he had his bowel movement, then I would clean his anus or whatever, you know, and it was never any -- trying to help himself, like he was an invalid, you know,

pity me, this has happened to me. You know, he never did anything to make things better.

Now you go get groceries or something five minutes away from him and he would go banana nuts because I was gone longer. I mean it was a like a trained dog, you just do whatever you had to do and whatever. I never had a break from him, but after this incident of him throwing food all over the floor and hitting me with a tray, we were in bed that night and Rick took my face with his little hands like this and says, mommy, why does daddy do that to you, and I says, I don't know. I said, just be good, whatever you do, both you kids be good, just be good, be good for me, and that's why, you know, they were like they were. They just were good kids, they really were. Richard, Sr. --

Q. I'm sorry, so Rickey, Richard, Jr., how old was he when he expressed obviously an awareness of --

A. Probably about three, three and a half years old. Now, that's one of the times that sticks out in my mind because he'd always

come up, Rick, Jr. would, and touch my face, rub my face like this, you know, touch my hair, my arm, just to let me know that he loved me. He didn't have to say, mama, I love you, I know he did.

Q. Was he very close to you?

A. Very close, very, very close.

Q. Aside from being physically weak, because he must have been weak and looked weak because of his heart problem --

A. By the end he was doing fine. I had taken him to Miami, the Children's Hospital, and they said that he would eventually have to have surgery to his heart, but at this time to continue doing what I was doing, feeding him good and seeing that he got plenty of rest and this type of thing.

Q. You were saying that Rickey saw a great deal of violence, saw you subjected to a great deal of violence after Richard, Sr. started healing from the accident, is that correct?

A. This is where it really started. I mean not really started. It was always there. Lawrence Hyatt, his partner, again

found us a house right I guess three or four miles from work, and Richard, Sr., excuse me, would come home during the day and just come home, give me something to do as far as bookkeeping or whatever for the store.

Q. Excuse me, they owned a store?

A. He was in partnership due to Lawrence Hyatt and another man by the name of Shaw, but actually the partnership started 50-50 later on down -- later on in the store and I do remember Richard coming home one day, it was in the morning and it was right after I had fixed the kids their breakfast and we were just kind of enjoying each other and he came in and he wanted me to go to the bedroom with him and I said no, you know, the kids are awake and this type of thing, and he told me, he said, you will do what I tell you to do, when I tell you to do it, any time I tell you to do it, and he slapped me and he sexually attacked me that morning on the dining room floor in front of Richard, Jr. Rick, Jr. became very, very upset. I ended up with my finger being broken that particular time.

Q. How did that happen?
A. He broke it by bending it, bending the arm behind me and just breaking my finger along with it. I remember Rick, Jr. coming over to help me and he was kicked by his father and I looked at Rick, Jr. and told him to go away, go away quick, go hide, do whatever you have to do, and he just was like he needed to go away, but he wanted to be there with me.
Q. And how old was he at this time?
A. He was probably about four then.
Q. Later on I remember a day that Rick, Jr. got angry with me because I told him no, he wanted to do something and I said, no, you can't do that. He was all dressed up, you know. He loved to dress so sharp, you know. He liked hats and this type thing. I think he wanted to bring the cat in and I don't remember just what the incident was, but I know that I told him no, you can't do it, and he looked me square in the eye and started shaking that little finger at me. He said, if you don't let me do what I want to do, he said, I will push you down on the floor and I

will break your finger. I will stomp you, he said. That was very obvious from where he was getting this. That's the first time he ever said anything to me like that, ever, and I side Rickey, when mom tells you no, it's for your own good. I said, do not ever say that to me again. He says, well, daddy says it to you all the time.

(Playing of videotape interrupted).

MR. PRESTON: I believe we were about 1020, Judge.

BY MR. PRESTON:

Q. Doctor, the incidents just described on the tape, the sexual assault and the comments that Richard Highlander, Jr. made to his mother, were these the incidents that you had earlier discussed in your previous testimony?

A. Yes.

Q. And was this the area in which you had indicated that the defense mechanism was beginning to come into play here in terms of him associated with his father, is this the area you were referring to?

A. That's right.

Q. Was there any other significant parts of the tape that we've seen so far that were particularly important that we have not covered?

A. Yes, I was particularly struck by Mrs. Webb's mention of the fact that she refused to cooperate with Mr. Highlander, Sr. in instances where he asked her to do something that was against her principles, and she seemed on the tape to take some degree of pride in that, she prided herself on being a person who did indeed have principles. This has implications for the development of conscience, the development of internalized standards which takes place normally between the ages of three and six, and it's safe to say on the basis of this tape that had the defendant remained with his mother, that he would have been exposed to a much more positive role model in terms of the development of inner standards and conscience.

MR. PRESTON: Thank you, Doctor, we'll pick up the tape again.

(Playing of videotape continued).

A. (Continuing) So anyway, like I said, that was the first time that Rick said anything to me like that and -- you know there's something with Barbara here I really -- she doesn't know a lot, I tried to protect her from it.

Q. We took a short break for the purpose of you to compose yourself and now we're back on and if it's okay with you could you tell us a little bit more about Rick, Jr.'s reaction to his father's physical abuse?

A. Well, I just remember that Rick, Jr. tried very hard to protect me and he started getting some blows for himself by doing that. Whatever, whether I would be on the floor or whatever, whatever the case was, I would always tell Rick to move away, to get out of the way and it was hard for him to leave me. It was like I want to be there with you, but I need to get away too and --

Q. How often again did this happen?

A. It happened frequently. Like I said before, it could be every day, every other

day, it could be in the middle of the night, it didn't make any difference. It just didn't make any difference. I remember the kids being small and things happening during the night, you know, and they would hear me screaming and of course they would wake up and start screaming and sit up in their beds and watch what was going on. I can remember even Barbara being little, she started, you know, screaming. She learned how to do it too and the fear that I had of him, we -- I jumped ahead of the story at the time when we lived at the store and the kids were really small and I remember Richard being outside, it was like a store, grocery store-service station type thing and then we had a screen door and then it was like a private residence type that we lived in.

I remember Richard coming in the house, I was pregnant at the time, not with either of the living children, but I was pregnant at the time and he beat me unconscious, he spit in my face, he took his foot and rammed it into my stomach, pulled my hair and I miscarried this child. I had to

have surgery done on my nose because the bones were all broken and I couldn't breathe. They had to go in and take the bone, some of the bone out of my nose and I was probably in the hospital three or four days.

I remember being pregnant with Barbara and being beat when I was pregnant with her and going to the doctor all bruised up. I had a check up, you know, one of them monthly check ups and the doctor that delivered her asked what happened. I told him that I had fallen. He looked me right in the face, he says, you didn't fall. I said, no, I didn't. He says, abuse in the family, and I said yes, and Barbara was also born with a slight heart problem. You know, she's fine, but she also had the defect.

Q. In your opinion what motivated Richard, Sr. to be abusive?

A. Just the person that he was. Maybe some anger that had been with him forever, I don't know. I felt that the man hated me, I felt that I was responsible for everything. I was feeling that whatever happened to me I

deserved it. I became a nothing of a person. I just began to accept the beatings as part of eating or sleeping, going to the bathroom, they just were there. There was no where to go for help, no where. By the time it had reached that point my family wanted nothing else to do with any of us. They had -- they were scared to death of Richard, Sr., they did not want him around their homes. It became -- there was no outer strength from anyone.

Q. So there was no place for you to go?

A. No place to go. I was given -- at that time I remember another meeting that I had, more than one meeting over this, I was given an allowance to buy groceries with to do me for a week. This was to buy groceries, pay a bill or whatever and it was something like $125, it was to take care of everything and I had to keep a black book of every penny I spent.

If I was ten cents over, that was good. If I was ten cents short, I got my face bashed in. I had to account for everything, everything. I had to have

receipts, I had -- you know, a dime would drop out into my pursue and I was not aware of it. I would get the holy heck beat out of me. It didn't take much and always explaining, always explaining, defending myself to explain. Didn't take much. I think he -- I look back at it now and I firmly believe the man was happy doing what he was doing.

Q. Did he have weapons?

A. I remember once when we were out at the service station that the house was connected to that he had a gun under the counter. I remember him, and I don't know where this gun came from or rifle came from, he chased me all over the house, going to kill me, going to shoot me with this gun, and laughing after he got me so petrified, and I remember the children and myself going up underneath the bed.

Excuse me, and then I also remember once that I was going to hang myself in the closet. I didn't mean to do this. Well, during the time that he had broke my nose he also busted out my teeth and I was

going to the dentist and I had to catch a bus to go to the dentist and I got to a point where I couldn't take anymore. And we had moved again to a nice home and Gladys came into the picture then and I'm jumping ahead of myself again.

I wanted to tell of another incident that happened with Richard, Sr. with Chlorax, he drank Chlorax and then drank whiskey behind it, telling me that he was going to kill himself. I often wished he would have. He used to put fear, subjected my children to that.

Q. Here are some tissues.

A. I didn't mean to. I'm sorry.

Q. As you can see, Lucy Webb is very upset and so we took a break so she can compose herself.

Obviously this was very traumatic and very painful for you. In what ways did the abuse you were subjected to show itself on Rickey, Jr.?

A. I'm sure that it had an effect on all the children. I think with Rick, Jr. being the way he was toward me, being a boy, you

know, you teach your sons to grow up and be a protector of a woman or, you know, and I think he tried real hard to do what he could for me. I think it had a big impact on him, seeing -- you know, a parent, when things like this go on in a home, parents are so stupid to think just because a child is small that they're not going to remember. They do. You think because they're two or three years old that they won't remember in 20 years. They do. I firmly believe that with all my heart. I just --

(Playing of videotape interrupted).

BY MR. PRESTON:

Q. Doctor, Mrs. Webb has just expressed her opinion about whether children remember things from their youth. Is there any validity to her opinion?

A. Absolutely there's validity to her opinion.

Q. And could you explain that to us?

A. Yes, not only do adolescents and adults remember things from their childhood that their parents have no idea that they

would retain, but they also tend to act on these memories both consciously and in unconscious ways. The very common pattern in acting on these painful memories is to master the trauma, to master the horrible experience of being victimized by undergoing the same experience, only this time in the role of the perpetrator rather than being a passive victim.

MR. PRESTON: Thank you, Doctor, we'll start with the tape.

(Playing of videotape continued).

A. (Continuing) I just know it had an impact on him, I know that.

Q. Was he a nervous child, was he --

A. No, he didn't seem to be a nervous child. He was relaxed, had a cute little sense of humor, always doing things to make you laugh, making things better, always trying to make me happy, really loving me. He was different when his dad came around. He kind of got quite, he was able to be himself, you know, around me. He just liked it with mommy, it was like the three of us

were -- we had a very close bond. Like I said earlier, you really didn't have to discipline those children. They were just, they were good. They were just good kids.

Q. Excuse me, you eventually left. Could you tell me, give me some details about the circumstances?

A. Well, we had moved to another home, the last one that we shared together, and it was a nice home and --

Q. I'm sorry, how old was Rickey?

A. Rickey, Jr. was about, he would be five by then. We had -- there was a girl across the street, a woman across the street that had two small children, the little boy was Rick's age and they would play together and the lady and I really didn't become fast friends or anything, but we would, excuse me, she would be out sweeping her front driveway or area and I would do the same, me doing the same thing and we kind of chit-chatted for a little while.

Richard seen her, decided that he wanted to have a little party one night and we invited the neighbors and the lady

that was living across the street came over with her husband and I missed Richard, Sr. and Gladys and I just happened to pull the curtain back and they were out on the patio just giving each other a nice big healthy kiss and I don't know how long that had been going on. I did see that and I -- it was just shortly after that that I left. The beatings continued and --

Q. Is that the reason why you left?

A. No, I had put up with that before, that wasn't -- you know, that was just -- it was nothing new. The reason I left was because I know if I stayed there that I was eventually going to be killed, I just felt like Richard was going to end up killing me. I left for my own sanity. I knew that in my way of thinking at that particular time that the children had a roof over their head and they had a bed to sleep in and I felt like they would be all right there. I had taken another beating the night -- that night, and then the next morning when I had to go to the dentist, I just kept going.

(Playing of videotape

interrupted).

BY MR. PRESTON:

Q. Doctor, at about 1113, 1114 now, she tells us that she left because she thought she was going to be killed, she tells us she left for her own sanity and yet she thinks the kids are going to be all right in that same household. What's happening psychologically in this reasoning?

A. This is a process known as rationalization. It's when we can't face something that is happening to us or something that we are doing or thinking or feeling, and so in order to achieve some kind of psychological consistency we invent a reason to explain it and if we do a good enough job of deceiving ourselves, then we manage to achieve some psychological peace through this rationalization. I think that in Mrs. Webb's case this was made easier by the fact that she herself had experienced the loss of her mother early in life, and so what she was inflicting upon Richard Highlander, Jr. at that point was something that she herself had already undergone and I see that

experience of hers as facilitating this process, beyond the realistic reasons that her husband was threatening to kill her every day.

MR. PRESTON: Thank you, Doctor, we'll start it up again.

(Playing of videotape continued).

A. (Continuing) And I called the girlfriend that I had grown up with that lived in Winter Park and I asked her, actually I called her mother and I asked her mother could I come and stay with them and she said yes.

Q. This is in Winter Park?

A. Florida.

Q. And how far was this from where you were living with --

A. A good thirty, forty miles, and I stayed with them and I called Richard, Sr. in about a week and I told him that I wasn't coming back and that I wanted my children and he told me, you left the kids so you're never going to see them again, and he said that he was going to file for divorce and get custody

of them, so I guess a little while passed and I called him again, I wanted to come and see the kids and he said that I could, so I went out to visit with the children and they were dirty. He wanted me to go over and talk to Gladys and I was not aware at the time that she was pregnant.

Q. Pregnant with his child?

A. Yes, with Richard, Sr.'s child and I told him again that I wanted the kids and he said you can have Barbara and you can have Lonnie, but you can't have Rickey, and I said why. He says, because he's my namesake and I want him. I said well, I wanted all three of them and he went ahead and he filed for divorce and I signed it, by the end everybody was aware of where I was at and they had my address and my phone number. We had to -- I got a letter from the welfare department or Children's Protective Service, or something like that they call it now, to come to court because they were going to put Lonnie and Barbara in a foster home.

Q. And not Rickey?

A. No, just the girls, so I went to the

courthouse and appeared before the Judge. He asked me if I wanted the children and I said I want all three of them. I can't take care of them financially right now, if you could place them in a foster home until I can get on my feet, I wanted the children. During that time Jack and I had gotten married. I went out because I had the visitation rights for these children. I went out to Rick, Sr.'s home, he had been -- by then he had married Gladys, to see my children. He wouldn't let the girls go with me, he would not let Rick go with me, and I'd go out there, he wouldn't let me have him.

Couple different occasions Rick asked me why I had left him and I told him that I loved him and I said, I can't have you because your dad will not let me have you, and he was too young for me to explain the circumstances to him. The very last time I saw him it was taking him out to the air base to see the planes, he had a good time, we were coming off base and he asked me again why I had left him because he saw the girls there, why I left him, and I couldn't answer

him. I couldn't give him an answer. You know, there's so much hurt. How do you tell a little guy --

Q. How old was he?

A. He was five and a half then, that you just -- I couldn't risk the fact of telling him, your father doesn't want me to have you, your father doesn't want me to see you, because Richard had started, well, you know, next time you come you can't see him, he started that with me, so it was -- I went back out to the house, to Richard, Sr.'s house and Richard, Sr. told me, he says, if you -- and I was pregnant with my last child, and he said, if you ever come around here again, he says, I will kill you, and I heard Rickey in the background saying, Gladys, who is that, is that my mama, and she said no, that's nobody, so --

(Playing of videotape was interrupted).

BY MR. PRESTON:

Q. On the tape now about 1121, Doctor, Lucy Webb has just described the process of her separation from her son. Could you

explain to us the significance of the events that transpired here in terms of their impact on Rick's life for the future?

A. In the first place, Mrs. Webb was quite right when she says that it's impossible to explain to a five and a half year old why the mother that he loved and attempted to protect early on has left him. A five and a half year old can't achieve an understanding of the adult's perspective on things, that his mother left because the father repeatedly threatened to kill her and she was afraid for her life and had every reason to expect that he would eventually kill her if she continued to return to see him. What a five and a half year old understands is that this loved parents who should be powerful and reliable and a protective figure, that this parent has rejected the child, that is the level of understanding of a five and a half year old and I have no doubt that this is the way Richard Highlander, Jr. processed these events in terms of his understanding.

Now, I felt that this last

encounter with Richard, Jr., an indirect encounter, Mrs. Webb never really got to see him that last time, this last encounter was extremely telling in terms of the degree of psychological abuse that existed in this home with the natural father and the step-mother. When Richard, Jr. asks Gladys, the step-mother, who is that, is that my mama, Gladys replies, that's nobody, in effect reducing this loved and cherished mother to a zero.

Now, when the State of New Jersey terminates the rights of a natural parent and places a child for adoption or with a foster parent or with a selected home, it's the official policy of this State to prepare a document that is known as a life book. A life book is a one or two page document that contains photographs, written passages and any other information that will enable a child to retain a positively valid mental image of the parent whose rights have been terminated. Now, this is the policy with every single child who is placed for adoption, and the reason for this is that

child development research has shown that it is absolutely essential for a child to have some sort of positively valid image of the parent, the natural parent, that this is the child's foundation. The child can say to him or herself, well, this is where I come from, even if the child thinks mommy or daddy did not take care of me the way I need to be taken care of so I had to be placed with these other people, at least through the development of this life book there is something that the child can latch onto to retain a positively valid image of this parent.

Gladys Highlander did exactly the opposite. She reduced the mother to a zero, so Richard Highlander, Jr. was deprived not only of the actual parent who had values and standards, who did comfort him and protect him, but he was also deprived of any kind of positively valid mental image of this parent. This is extreme psychological abuse.

Q. What did this do to his own evaluation of himself in later life? What things could transpire from that?

A. Number one, this kind of loss and the psychological abuse that followed had to have had a profoundly negative effect on Richard Highlander's self concept. Further the notion that this parent who should have been reliable, protecting, consistent, all loving and all accepting left, rejected him, contributed to this pattern that was discussed earlier, a pattern of seeking boundless love, affection, acceptance, nurturance from adult partners to make up for this childhood hurt co-existing with a sense of rage against women. This is all directly traceable to the sequence of events that we just heard Lucy Webb describe.

Q. Is this a mere speculative thing or can you say this with any degree of certainty?

A. I'm saying this within a reasonable degree of psychological certainty based on case records, the videotape and the more recent history.

MR. PRESTON: We'll start the tape again.

(Playing of videotape

continued).

A. (Continuing) So I felt for the best interests of Rickey and the best interests of the child I was carrying and for myself not to go back.

(Playing of videotape was interrupted).

BY MR. PRESTON:

Q. This last statement, does this bear any resemblance to her previous decision to leave the children in the abusing home?

A. Yes, she sites the best interests of Rickey.

(Playing of videotape continued).

A. (Continuing) I just feel so bad about everything. Well, in my -- I was so depressed and so lonely for my son and I couldn't snap out of it. I missed him so much and I wanted to hold him and see him and I just -- I couldn't go anymore and I started going to see a psychiatrist and I was under his care for a long time. He put me in the hospital and from what I was under, I understand for about three weeks, and he gave

me shock treatments because I didn't respond to drugs and my depression was so bad I couldn't function and it seemed like after that happened and seeing the psychiatrist like I did, I was able to turn my life around and really get on a good even walk in life.

(Playing of videotape was interrupted).

BY MR. PRESTON:

Q. Doctor, Mrs. Webb now describes the treatment that she received in connection with these incidents. Does her description of that treatment seem like it was a mild treatment, a significant treatment, how does it stack up against your knowledge of psychological remedies in these situations?

A. This is a major intervention, to hospitalize somebody, try drugs and have the patient not respond to drugs and then to employ shock treatment.

Q. And does that treatment from your experience seem appropriate from the incidents that were described?

A. At that time it was felt that shock treatment was the treatment of choice for

profound depression in which the individual did not respond. Today there are more modern drugs.

Q. But the evaluation of the severity at that time you feel was accurate or inaccurate?

A. It doesn't surprise me that this individual went through a severe depression.

Q. Now, Richard Highlander, Jr. experienced that violence in the same home from the reports you've reviewed, is that correct?

A. Correct.

Q. And what kind of treatment were you able to find out that he received?

A. He received extremely little treatment. The hospitalization at Coral Ridge simply involved putting him on a closed ward where he became quite violent and threw chairs at staff, and so forth, and then in negotiating with him to calm down and releasing him to an open ward, at which point he escaped. Now, that was the only treatment that he received apart from this one time intake interview at the Atlantic Mental

Health Center.
Q. Who would have had the better ability to cope with these violent situations as they were occurring when Rick was three, four, five years old, his mother or Richard Highlander, Jr.?
A. Certainly the mother. The adult ego has a greater degree of resilience than the ego of a developing child which is in its formative stages and is profoundly influenced by events such as these.
Q. So as severe as was the mother's need for treatment, would you say that Rick's need was even more severe?
A. Yes, I would.
(Playing of videotape continued).
A. (Continuing) I was eaten up totally with guilt, I was so fearful for my daughters, that their father would find us and maybe hurt them or interfere in their lives and I just wanted everything very peaceful for those children and I was hoping that the same was for Rick.
Q. How are your daughters doing today?

How is Lonnie -- you have three daughters now?

A. I do. Well, my oldest daughter, she's living in Georga, she has children and she's doing fine. She's -- it's been rough on her, you know. She has had to learn, grow and learn at the same time. My daughter Barbara is fine. She has a good job, is a well adjusted young lady and then my child with Jack is a well adjusted young lady. They all seem to be happy.

Q. When was the last time you saw Rick, Jr.?

A. I saw Rick about four years ago. We had been in contact with each other and I wanted very much to be with him, to see him and I asked him could I come to New Jersey and see him and he told me, he says that he's not ready for that yet and he said that he wanted to see me again. He said give him a little time and he called me and he said that he was ready to see -- it wasn't that long, he was working as a window washer in the Trump Hotel and very proud of himself. We had long conversations on the telephone

before I went to New Jersey, we had a lot of fun talking to each other, we both laughed and just really enjoyed each other, getting to know one another over the phone.

I went to New Jersey to see him. He had a sense of humor. I was able to do the things that I wanted to do with him, I was able to touch him and hold him and kiss him and him to call me ma. We had breakfast together. We walked together on the Boardwalk, I was able to enjoy some of the things with him. I was with him for about a week and I returned home and there was a little bit of contact after I got back and I haven't talked to him for awhile.

Q. Is there anything else that you would like to say?

A. Yes, if I were to talk to the ladies and gentlemen of the jury, which I am going to do, I would want them to understand that I do not condone what has happened, but for them to understand the environment that Rick, Jr. lives with, that for the court to have mercy on him and one more thing. If to be sentenced to jail for a crime, for the court

to look maybe at his environment with his father after I left and the environment that he had with me and to understand that if I had stayed that I would be dead today and just to have mercy on him. He's not all responsible for this, he's not. He just can't be.

Q. Thank you.

(Playing of videotape was concluded).

MR. PRESTON: I'm finished with the monitors.

THE COURT: Finished with the examination of the witness?

MR. PRESTON: I have some specific questions which are addressed to the Doctor and that's all that needs to be done now.

THE COURT: All right.

MR. PRESTON: I just wondered if you wanted to move the monitors out of sight.

THE COURT: No, we'll move those at the recess.

BY MR. PRESTON:

Q. Doctor, in being retained to evaluate Rick Highlander, there were several specific questions that we asked you to address. Could you tell us the common long term effects of the kind of child abuse that you noted in the materials you reviewed and could you answer that specifically to what you observed about Rick Highlander himself?

A. Yes, the research literature shows that the abused child is constantly alert to subtle cues in other people's behavior that may signal an aggressive attack. This is a result of being batte[illegible]d on a constant basis that a child develops these antenna to detect signs that somebody is going to attack him or her, and this is often generalized in adulthood into an overall paranoid stance toward other people in which the individual becomes obsessively preoccupied with how others are behaving toward him, or toward her. The individual fear is not only physical attack, but any kind of insult or sleight or rejection.

Other common consequences of child abuse are negative self concept and low

self esteem, aggressive behavior, difficulties in relating to peers and adults, impaired capacity to trust others and generalized unhappiness. Now, all of these are present to some degree in Richard Highlander, and specifically the paranoid stance toward other people, the aggressive behavior and also I would say the generalized unhappiness. This is not an individual who is happy, it's not an individual who was at peace with himself, so there is the generalized unhappiness that's a common consequence of child abuse that we find in this defendant. Further his reactions to the chronic abuse during childhood consisted also of the bed wetting, nightmares and daytime loss of bladder control. This indicates a very severe level of anxiety resulting directly from this man's experience of abuse during childhood.

Q. Could you tell us about any specific effects of the events that we've reviewed in the documents and in the videotape, any specific effects that would have occurred to Rick that may not occur in the common child

abuse cases?

A. Yes, this man's history is unique in that he did have a very close bond with his mother up until the age of five and this bond was very abruptly terminated. As I testified before, a five and a half year old is not capable of achieving an adult's perspective to understand why a parent left. A child simply experiences the rejection and this very often produces a rageful feeling against women. This certainly we find in the defendant on the basis of the case history data and the other materials that have been made available to me.

The research literature discusses at length the specific effects of an impaired relationship with the mother during childhood. This aspect of traumatization goes beyond the physical abuse. In fact Bolbe (phonetic), who is a very well known psychoanalytic researcher in the area of child development and depravation, writes about what he terms affectionless characters. These are individuals who are geared toward the

satisfaction of their own needs, who are capable of relating only on a very superficial level to other people and practically without exception these affectionless characters that Doctor Bolbe discusses had a very impaired relationship with the mother during the early segments of childhood.

Q. I thought you said, Doctor, that Rick had a very strong need for love. How does that comport with this affectionless character idea?

A. The affectionless character is a defense. These individuals are extremely frustrated and can he deprived in terms of their nurturance needs and from means of coping with this extreme depravation and the consequent yearning for acceptance or affection or approval from others, especially from women, very often takes the form of an exaggerated coolness or toughness, a macho stance. This serves a defensive function. It keeps these yearnings out of awareness that enables an individual to protect himself from this extreme depravation.

Q. With respect to the issue of whether Rick was suffering from a mental disorder or defect at the time or during the time that he killed Gloria, you've discussed some of that with us so far in terms of intermittent explosive disorder, is that correct?

A. That's correct.

Q. And you gave us some of the reasons and some of the factual background which went into that diagnosis. Would you tell us now anything else that you think was important from the facts that were presented to you in the materials, important to you in coming to that diagnosis that you have not discussed with us so far?

A. I would emphasize the familial aspects of it, the diagnostic manual mentions that disorder is much more common in family members than in the general population, although it is a rare disorder. As we've seen in this tape, the father clearly exhibited indications of having such an explosive disorder.

Q. There are several instances now, Doctor, that will be presented to the jury in

which they're going to have to make an evaluation on Rick's state of mind and I would like if you can to give us your best professional opinion as a psychologist as to some of these questions that I will be asking you now. Firstly, at the time that Rick killed Gloria, did you find any evidence in the materials that he was you under the influence of extreme mental or emotional disturbance?

A. Yes, it is my professional opinion within a reasonable degree of psychological certainty that he was under a great deal of stress and the stress consisted of his rejection by the victim, Miss Simonelli. Also the impending threat of going to jail, and these two elements provoked a regression in his ego function, a regression is a technical term for going back to a more primitive, developmentally primitive level of function, a less organized level of ego function in which the individual is not thinking rationally, is much more prone to give in to impulses than if that person were functioning at his or her charecteristic

level. This series of events, the rejection by Ms. Simonelli and the threat that she was going to upgrade the charges so that his probation would be violated and he would be facing long jail time produced an obsession with the idea of doing violence to her, killing her.

Q. Doctor, you've described at least two mental or emotional factors that Rick was under the influence of at the time of the murder. Using your insight as a psychologist to mental operations, can you say with any certainty which one of those factors was the predominant factor, the motive in causing the killing?

A. No, I can not say which was the predominating factor.

Q. Doctor, in reviewing the record and reviewing your diagnosis and evaluation of Rick Highlander's mental condition, at the time of the killing did you find that a mental disease or I believe you used the word disorder?

A. Disorder.

Q. Disorder was present in Rick

Highlander?
A. Yes.
Q. And is it your professional opinion to a reasonable degree of psychological certainty that Rick's capacity to either appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as a result of that intermittent explosive disorder?
A. Yes, that is my opinion.
Q. And in coming to that opinion you've had an opportunity to review all of the Prosecutor's documents that were submitted to you, all of the defense documents that were submitted to you, the videotape and the transcripts of the witnesses at the trial?
A. That's correct.
Q. Given all the factors which were affecting Rick's mental condition, at the time he fired those shots, at the time he killed Gloria, could you say with any degree of certainty, again applying your psychological insight and to the best of your professional ability, could you say with any

degree of certainty that Rick was aware or intended a grave risk of death to Patrick Sullivan?

A. Yes, I can give such an opinion within a reasonable degree of psychological certainty and my opinion is that he did not intend a grave degree of harm, bodily harm to Patrick Sullivan, that his rage was focused upon the victim, Ms. Simonelli.

Q. Could you say with any -- if he did not intend it, could you say with any degree of certainty under the same criteria that he was consciously aware that his actions were putting Patrick Sullivan in grave risk of death?

A. In my opinion he was aware that he was endangering this man by taking a shot at him, but in terms of those specific criteria, he was knowingly putting Mr. Sullivan at a grave risk of death, in my opinion the answer is no.

MR. PRESTON: Judge, I have no further questions.

THE COURT: All right. Thank you. We will pick up with the cross

examination of the witness in just a couple of minutes. We'll take a recess before we do.

(Jury leaves the courtroom).

THE COURT: You may step down, Doctor. You're not to discuss the substance of your testimony with anybody during the recess.

(Whereupon a recess is taken).

(The following takes place in open court out of the presence of the jury, in the presence of the defendant).

THE COURT: Mr. Highlander, good afternoon.

MR. HIGHLANDER: Good afterncon.

THE COURT: There are two issues that needed your personal attention and that's why I asked you to come back this afternoon briefly. First, we will tomorrow morning be providing closing arguments and final instructions to the jury. In connection with the final charge to the jury, my instructions to the jury, there is a paragraph that is similar to the one I read

to you last week that I want to read to you again, and your attorney has indicated to me that he has discussed it with you and that it is your request that I read this to the jury as part of my charge, which of course I will do if you request me to.

MR. PRESTON: May I have one moment, Judge?

THE COURT: You may.

(Mr. Preston conferred with defendant).

MR. PRESTON: We just wanted to make sure we were connecting on the right information.

THE COURT: No problem, I want to make sure the defendant knows what I'm talking about. First paragraph I'll read to you, the question I'm going to ask you when I get finished reading it is, do you want me to read this to the jury as part of my remarks or not. First, before I discuss the specific issues relating to the determination of the aggravating and mitigating factors, I want to mention several preliminary thoughts. The defendant chose not to be a witness in this

phase of the trial. It is the constitutional right of the defendant to remain silent. I instruct you that you are not to consider for any purpose or in any manner in arriving at your verdict the fact that the defendant did not testify, nor should that fact enter into your deliberations or discussions in any manner or at any time. The defendant is entitled to have the jury consider all of the evidence that has been presented regardless of whether he testifies as a witness. Did you hear that?

MR. HIGHLANDER: Yes, sir.

THE COURT: Did you understand it?

MR. HIGHLANDER: I understand it.

THE COURT: Have you had the opportunity to discuss it with Mr. Preston?

MR. HIGHLANDER: Yes, I have.

THE COURT: Any questions of him?

MR. HIGHLANDER: No.

THE COURT: Is it your request that I read that to the jury or not?

MR. HIGHLANDER: I don't want you to read -- we want this part read to them.

THE COURT: I'm going to ask you about the second part separately, but with respect to that which I just read to you, it is your request that I read it to the jury?

MR. HIGHLANDER: Yes.

THE COURT: Now, with respect to the second paragraph, you've discussed this with Mr. Preston, let me read it briefly so you understand specifically and I'll ask you the same question. The State parole board may release a defendant convicted of murder after 30 years have passed only if satisfied that his release will be fully compatible with the safety and welfare of society. The decision to release may be further reviewed in court. You may not speculate as to the precise sentence this defendant may receive from me between 30 years and life. You must not speculate whether this defendant would or would not be released after 30 years. So far as you are

concerned, if you have not decided on death for the defendant you must decide whether his possible future release would be a danger on society. If you decide after following the procedures that I am about to outline for you, that death is not the appropriate and fitting punishment in this case, it would be a grave violation of your duty to refuse a sentence other than death because of the existence in the parole board of responsibility with respect to release after 30 years or because of my power to impose a minimum term of 30 years imprisonment without parole. Did you hear that?

MR. HIGHLANDER: Yes, sir.

THE COURT: Did you understand it.

MR. HIGHLANDER: Yes, sir.

THE COURT: Have you discussed it with Mr. Preston?

MR. HIGHLANDER: Yes.

THE COURT: Any questions you would like to ask Mr. Preston or anybody about this paragraph?

MR. HIGHLANDER: No, sir.

THE COURT: Is it your request that you do not want me to read that?

MR. HIGHLANDER: No, I would rather you not.

THE COURT: At the defendant's request I will read the first and not the second paragraph. The testimony will be completed this afternoon. You indicated that you didn't choose to be here for that and I will honor that request. Tomorrow morning we will not have testimony, we will have final arguments by counsel and the statement of the law by me. I simply want to ask whether your decision not to appear as far as you're concerned carries through that phase or if you would rather be here tomorrow morning for that phase of the proceedings?

MR. HIGHLANDER: I don't want to be here, Your Honor.

THE COURT: In that event we'll honor the defendant's request and he may be excused from being here tomorrow morning for the proceedings prior to submission of the matter to the jury. Anything further we need from Mr. Highlander?

MR. PRESTON: Nothing, Judge, I would ask that he be returned to the county jail.

THE COURT: Thank you, Mr. Highlander.

(Defendant leaves the courtroom).

THE COURT: Mr. Preston, I assume you'll be offering D-10.

MR. PRESTON: I'll be offering D-10 and a couple others.

THE COURT: In that regard --

MR. PRESTON: We have kept the VCR and the small TV.

THE COURT: I'll ask you to make that equipment available in the jury room tomorrow.

MR. PRESTON: We'll leave that available in the courthouse tonight, Judge. Doctor Dyer is my last witness, but I have with respect obviously to the exhibits to be offered in evidence.

THE COURT: What do you have on that and maybe I can tell the jury all of the exhibits before we recess.

MR. PRESTON: D-10 certainly.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Again, Your Honor, I don't know that I have any ability to object in this phase of the trial.

THE COURT: I think the legislature has probably pretty much taken some of that ability away from you. I will admit D-10.

MR. PRESTON: D-18.

THE COURT: Mr. Talasnik.

MR. TALASNIK: I have serious problems with authentication and relevance, but I don't know that I'm permitted to offer those objections. I do offer them. The Court can make its ruling.

THE COURT: I understand your problems. Having been trained as we all have been and having experienced the process for a number of years since having been trained on both sides of the bench, I feel, and this is my first experience in dealing with this aspect of the statute, I feel like I don't know where I am in some respects. I will receive the proffer of D-18 and it may be so

marked.

MR. PRESTON: Under rule 1:13-5, the appendix one court rules, there is a mortality table and the rule provides that that will be admissible in court proceedings and we ask --

THE COURT: If it's relevant. To what is it relevant?

MR. PRESTON: The argument in Ramseur is the defendant was 30 some years old and he was going to have a minimum, if he got life, of 30 years and that therefore the jury could consider that factor. The Supreme Court said no, no, no, you can't put that under age. That's admissible, but you must put it under H, so we are admitting it under H.

THE COURT: What?

MR. PRESTON: His life expectancy together with his birth date.

THE COURT: His birth day is in evidence. What's the relevance of life expectancy?

MR. PRESTON: Life expectancy is the idea of what's going to be left of his

life if he is ever returned to society. How old is he going to be --

THE COURT: I'm missing something. He is now the age that he is, whatever that age appears in the record, and I think it's 31.

MR. PRESTON: That's right.

THE COURT: The jury knows that he's going to serve arguably at least 30 years. How does his life expectancy of how many years he has to live after the period he becomes eligible for parole bear on any decision the jury has to make? That utterly escapes me.

MR. PRESTON: Judge, it goes to the issue -- Supreme Court thought it was relevant in Ramseur.

THE COURT: No, the Supreme Court never said it was relevant in Ramseur, no, sir.

MR. PRESTON: The argument obviously to the jury is this guy is probably going to die in prison, probably.

THE COURT: What's the table say?

MR. PRESTON: The table says at 32 years old, they're talking about approximately 40 and a half years as to life expectancy. 32 years now, 40 and a half years he's going to be very close to the end of his natural life if he has the average life, that's all that I'm talking about. Now, the jury can believe that Mr. Highlander is going to live another fifty years if the Prosecutor wants them to believe that.

THE COURT: Tell you what I'm going to do, Mr. Preston. I'm going to take judicial notice of the fact that at his attained age, his life expectancy is approximately 41 years.

MR. PRESTON: That's the only thing we'd ask, Judge. That suffices. Thank you.

THE COURT: What else?

MR. PRESTON: I missed recording D-19.

THE COURT: That's the restraining order issued against the father by Gladys or obtained by Gladys. Did you give the other two exhibits to the reporter,

that is the tape and the letter?

MR. PRESTON: I'll do that. The letter has already been marked and the tape has been marked. The only thing it needs is to await Mr. Talasnik's cross, I guess, before I rest.

THE COURT: They're offered, they're in evidence subject to cross examination. Any other proffers of exhibits that you have?

MR. PRESTON: If D-9 was the restraining order, what was D-7? I'm missing one.

THE COURT: D-7 is a copy of the April 29 statement by Mickey Chambers marked for identification.

MR. PRESTON: Oh, that was from the guilt phase of the trial, first phase. I just started with the wrong number. Thank you, Judge, so there were only three items, I have two in. I don't believe there's anything else. That's it.

THE COURT: Bring the jury in.

(Jury returned to the courtroom).

THE COURT: Mr. Talasnik.

CROSS-EXAMINATION MR. TALASNIK:

Q. Thank you, Your Honor. Doctor, among the things that you have told us that you have relied upon are a discharge summary from the Coral Ridge Psychiatric Hospital in 1975, do you recall that?

A. Yes.

Q. Included within that discharge summary is a diagnosis that says "rule out schizophrenic reaction," do you recall that?

A. Yes.

Q. What does rule out schizophrenic reaction mean?

A. Rule out schizophrenic reaction means that the diagnostician had some doubt as to whether or not this individual might be a schizophrenic and so that diagnostic statement is an indication to withhold final diagnosis until further observation is made so that a schizophrenic condition can be ruled out.

Q. So the words rule out schizophrenic reaction don't mean rule out?

A. Well, the diagnostic statement is an

indication to await further observation until making a final diagnosis.
Q. But at least for purposes of this diagnosis it wasn't there?
A. Well, it was a suspected diagnosis, that's why it was in. They didn't know whether or not they were dealing with a schizophrenic.
Q. You also indicated reliance on a report from the Atlantic Mental Health Center which is dated 1985, do you recall that?
A. Yes.
Q. In there, there is the following language. The patient was oriented and showed no psychotic symptoms. What do the words "showed no psychotic symptoms" mean?
A. They mean that he was in adequate contact with reality, that he was not exhibiting hallucinations or delusions.
Q. So as least as of 1985 none of that was in the case?
A. He was not psychotic, that's correct.
Q. In the report that you yourself prepared there is an indication on page four as follows, under the issue of mental

disorders or defect. "Everything in this defendant's work history points to his having a normal level of intelligence. He does not suffer from any type of mental defect."

A. That's correct, that's in there.

Q. So there is no evidence of retardation, for instance, in the case?

A. None whatsoever.

Q. And none of a mental defect?

A. That's correct.

Q. What we have therefore is your conclusion that there is a mental disorder or disease?

A. Yes.

Q. And that those words can be used interchangeably?

A. Yes.

Q. And that he was under the influence of that mental disease at or about the time that he shot Gloria Simonelli to death?

A. Yes.

Q. And the label placed on that mental disease is intermittent explosive disorder as it is defined in the DSM-3R?

A. As defined in the DSM-3.

Q. Well, I've got this blue book here that says DSM-3R. What should I know about the R that is different from what you're talking about?

A. The R indicates that this is a revision of part of the third edition of the diagnostic and statistical manual of the American Psychiatric Association, or DSM-3. Essentially they have the same criteria for most disorders with the exception that there are some new categories that are included in the DSM-3R, such as a proposal for making rape into an illness which I disagree with.

Q. But with respect to, for instance, intermittent explosive disorders, the discussion of that disorder in the DSM-3 should be the same as the discussion in the DSM-3R?

A. Yes.

Q. So if I looked at the R version and you looked at the 3, we shouldn't have a problem communicateing about the same illness?

A. That's correct.

Q. You have reviewed with Mr. Preston the

kind of things that you relied upon in coming to your evaluation. One of those things was apparently a newspaper article that appeared in January of 1988 which contained an interview of the victim?

A. Yes.

Q. That article appeared some two months before she was assaulted and before she evicted the defendant and some three months before she was killed by the defendant?

A. That's correct.

Q. It included your review of a jail intake form that indicated some medication prescribed for Mr. Highlander for drug withdrawal?

A. That's correct.

Q. And that is referred to by you under circumstances where you never interviewed the nurse who prepared the report?

A. Correct.

Q. Never interviewed Mr. Highlander about all of that?

A. Correct.

Q. And under circumstances where you do not know whether the medication was given

because there were some objective symptoms of withdrawal or whether they were given because the defendant said I'm withdrawing from drugs?

A. That is correct.

Q. You relied upon police reports written by officers that you have read but never met?

A. Correct.

Q. You relied upon statements that were given by the two dozen or so witnesses that testified in the guilt portion of that trial who you have never met?

A. Correct.

Q. And you relied upon interviews with the defendant's mother and his sister, neither of whom you have ever met?

A. Correct.

Q. And at least one of the two you have never even seen?

A. Correct.

Q. But you are confident about the integrity of your conclusions because that's the kind of process that you're used to, correct?

A. That what is the kind of process that

I'm used to?

Q. Making an evaluation based on things that were written by other people that you have no direct contact with?

A. Well, I wouldn't say that I'm used to that as the sole basis for an evaluation. This is an unusual case.

Q. But in this case you are confident about your expert opinion, notwithstanding that you've had no contact with any of the people interviewed and you don't have any problem with the value of those opinions notwithstanding those facts?

A. No, I do not have a problem with the value of those opinions.

Q. Now, this opinion of course relies upon the truthfulness of the information provided by the defendant's mother and sister?

A. Correct.

Q. So that in the event for instance that the acts of abuse complained of never took place or if they did take place they never took place in the presence of the defendant, then your evaluation could be flawed?

A. That's correct.
Q. Now, your evaluation assumes the truth of what the mother has to say, notwithstanding that the father denies that any of it took place?
A. Correct.
Q. And notwithstanding the fact that the father's denial is supported by his current wife of 28 years?
A. Correct.
Q. And notwithstanding the fact that the defendant wouldn't talk to you about it.
A. That's correct.
Q. And notwithstanding the fact that when the defendant was interviewed by his attorney's own investigator about the subject of his family history, he never volunteered that any of this abuse existed?
A. Correct.
Q. Taking the mother's version of the defendant's history, what she has told you through her interviewer is that she herself was the victim of acts of abuse by the defendant's father.
A. Yes.

Q. That these acts of abuse were serious or violent and fell within the violent explosive type of reaction that you later see in the defendant's own background?

A. Yes.

Q. And that at least some of these acts were committed in the presence of the defendant.

A. That's correct.

Q. That the last of these acts would have been committed some 26 years ago.

A. Yes.

Q. Is there not a concept known as psychological bonding?

A. Yes.

Q. And to try to reduce it as best I'm able, this is a concept where a young child beginning say at about age nine months has their personality merge with that of the primary caretaker, be it a biological parent or someone else.

A. I'm not clear on your use of the term merge.

Q. That the child's -- well, I'll do it this way. Why don't you tell us what

psychological bonding or psychological parenting means.

A. Psychological bonding refers to profound emotional attachment that a young child develops for a caretaker and this begins to be a selected one which the child is more or less conscious of I would say at around age six or seven months. The term bonding or attachment refers to the fact that the child bases his or her emotional security on this relationship with the parent or other caretaker and on the fact that this caretaker represents for the child the primary source of nurturance, love, guidance, emotional security, acceptance, affection and protection.

Q. So this psychological bonding process you say can begin as early as maybe six months of age?

A. Yes.

Q. And it would normally be completed say by age two or two and a half?

A. Well, I don't know if it's ever really completed.

Q. It certainly will have been in effect

at some length by the time the child reaches age four or five?

A. Certainly.

Q. Isn't it true that the child will tend to develop the psychological bonding with the primary care taking parent?

A. With the primary caretaking parent -- I'm not clear on exactly what you mean by that.

Q. If the child let's say is in an intact family unit where there is a mother and a father and if the father is let's say a traditional forties father or fifties father who got up in the morning, worked all day, came home, patted his son on the head and maybe took him to the zoo twice a year and the mother got the baby up, fed the baby, bathed the baby, read to the baby, did all of those things, the mother would be the primary caretaking parent.

A. I see.

Q. The bonding would normally take place with that primary caretaking parent, isn't that so?

A. That's correct.

Q. Now, with respect to the Richard Highlander family, wouldn't it be fair to say that his mother was the primary caretaking parent?

A. Yes.

Q. So that the psychological bonding was between Richard Highlander, Jr. and his mother during the formative years of his growth?

A. That's correct.

Q. Assuming that what we saw on the tape is an accurate picture of Mrs. Highlander, she is a passive person?

A. Yes.

Q. She is a caring person?

A. Yes.

Q. She is a loving person?

A. Yes.

Q. And so Richard Highlander, Jr. would have bonded with that kind of person?

A. Yes.

Q. All of which would have occurred before she left.

A. Yes.

Q. And all of which you would think would

lead him to understand these kind of concepts, nurturing, loving, caring, like the mother we saw on the television.

A. He most certainly did have an experience of those things.

Q. And those would be a part of his make up because of the psychological bonding process with the mother, isn't that so?

A. When you say those would be a part of his make up, can you clarify what you mean by that? That he himself would necessarily be a nurturing, loving, caring person? Absolutely not.

Q. No, first off I think the way we do things is I ask the questions and you give the answers. If the question is unclear, just tell me you can't answer the question, okay?

A. Yes.

Q. Wouldn't it be fair to say that since Richard Highlander, Jr. went through a psychological bonding process with this kind, loving, nurturing mother, that through that bonding process that would be part of his personality?

A. Phrased like that I would have to answer no.

Q. So as a result of that bonding process he drew nothing?

A. Not in terms of identification.

Q. Well, all right, let's move to a different part of that testimony then or the taped interview. There were indications three or four different times during the course of the interview where Mrs. Highlander, the former Mrs. Highlander described how the defendant would react to seeing her abused, do you recall that?

A. Yes.

Q. She said that he would try to protect her.

A. Yes.

Q. That he would come to her aid.

A. Yes.

Q. That he would try to console her, everything is going to be all right.

A. Yes.

Q. Isn't that an indication that at that very young age he was aware that his mother was being victimized?

A. Yes.
Q. And he was aware of the wrongfulness of that victimization.
A. I think that he was more aware that she needed to be comforted at that point or that he needed to be reassured and in comforting her he got some reassurance.
Q. It is your professional opinion that as a result of the abuse that he witnessed before the age of five and a half, that 26 years later he was under the influence of the mental disturbance caused by that and that that is what caused him to kill Gloria Simonelli?
A. It was the entire pattern of his childhood and adolescence that resulted in that.
Q. Well, all right, but are we clear that what we're talking about are incidents that pre-date his sixth birthday?
A. I would say that there are many incidents after his sixth birthday that come into play.
Q. Which witness tells you that Richard Highlander was victimized or assaulted by

anyone after the mother left home?

MR. PRESTON: Objection, Judge. He didn't listen to the testimony of any witness. The question --

THE COURT: The form of the question I think is improper.

BY MR. TALASNIK:

Q. Which interviewee told you or anyone else that Richard Highlander was in any way victimized after his natural mother left home?

A. Lonnie Savage.

Q. She left to live with her natural mother, did she not?

A. Yes.

Q. The natural mother on the taped interview indicated as much, that she was shortly after the separation able to get custody of her two natural daughters, Richard's sisters, correct?

A. Yes.

Q. What other witness therefore was able to tell you or anyone else anything about what happened to Richard Highlander after his mother left and she got custody of his two

sisters?

A. There is a statement from the mother herself indicating that Richard Highlander blamed her for the beatings that he received from his father. He blamed her for leaving. My conclusion is that he was talking about events that occurred after she left when she wasn't around to protect him.

Q. That's simply your conclusion therefore?

A. That's correct.

Q. There is no one who provided information to you or anyone else that would directly indicate any victimization by this defendant after the mother left home?

A. That's correct.

Q. You found support for your conclusion by looking at the recent history of Richard Highlander and his relationship with women, correct?

A. Correct.

Q. And this began with the incidents that lead ultimately to his commitment back in 1975, a young lady that he had a problem with then?

A. Correct.
Q. And included young women that he had problems with more recently, including Phyllis Frangione?
A. Correct.
Q. And Tyler Fitzgerald?
A. Yes.
Q. And Gloria Simonelli?
A. Yes.
Q. And you saw, I think I recall through your testimony, the same kind of violent explosive reactions to all of these women?
A. Yes.
Q. That to use the description that you gave about the normal course of events, first he would become infatuated with them and shower them with gifts and with love, there would be a honeymoon period?
A. Yes.
Q. That he would then somehow set himself up for failure because of the effects of the emotional or mental disease that you've described for us?
A. Correct.
Q. That he would demand too much from

these women, that these women would be unable or unwilling to fill his voracious appetite and that would lead to a violent outburst and a break up?

A. Correct.

Q. And it was such a violent outburst and break up that led to the commitment in 1975?

A. Yes.

Q. That lead to his break up too with Tyler Fitzgerald in the 1985-1986 timeframe?

A. Yes.

Q. And the break up with Phillis Frangione in the summer of 1987?

A. Yes.

Q. And the break up with Gloria Simonelli after he assaulted her in March of 1988?

A. Correct.

Q. Now, with respect to the last three named women, that is to say Tyler Fitzgerald, Phyllis Frangione and Gloria Simonelli, there was something else that was going on over and above the fact that these women could not or would not satisfy his voracious love appetite, isn't that correct?

A. That's correct.

Q. And what was going on with each of those three women was the defendant's refusal to deal with any complaints, any criminal complaints that these people would want to or did in fact bring against him.

A. Correct.

Q. With respect to Tyler Fitzgerald, you are aware, are you not, based on your review of her interview, that there was a violent explosion like the kind you've talked about that resulted in her being stabbed or cut with a knife?

A. Yes.

Q. That based upon that she signed complaints against Richard Highlander.

A. Correct.

Q. That there began a period of some eighteen months to two years where there was harassment and threatening going on as against her and against her family?

A. Yes.

Q. And that this only ended two years later when she agreed to resolve the charges in municipal court?

A. Correct.

Q. And then we get to the next woman, Phyllis Frangione, do you recall her?
A. Yes.
Q. Do you recall that she also had a live-in relationship with Richard Highlander during the spring and early summer of 1987?
A. Yes.
Q. That again something broke down, she was unwilling to supply his voracious love appetite and there were violent explosions that resulted in her being physically assaulted by him?
A. Yes.
Q. And that in being interviewed by representatives of the law enforcement community, Phyllis Frangione indicated that she wanted to sign complaints against him, but she was afraid to?
A. Correct.
Q. That he had made it clear that if she signed complaints against him that she would be killed?
A. Correct.
Q. And then we got to Gloria Simonelli, right?

A. Yes.
Q. And Gloria Simonelli gets involved in a relationship with him which results in a violent outburst like the ones that appeared in the other relationships and she throws him out in the middle of March, 1988?
A. Correct.
Q. And again this sub-theme or other theme is also going on in that there were criminal complaints?
A. Right.
Q. Criminal complaints which she was never too timid to sign like Phyllis Frangione?
A. Correct.
Q. Criminal complaints that she was never so timid that she was willing to resolve them in municipal court like Tyler Fitzgerald?
A. Yes.
Q. And Gloria Simonelli is dead?
A. Yes.
Q. It is your professional opinion that at the time of the killing of Gloria Simonelli that this man was under the influence of this mental disease as you have

described it?

MR. PRESTON: May we approach the bench for a moment?

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: You have been giving limited instructions during the course of the trial where applicable, which is the only reason I approach now. The cases, especially Koedatich, indicates that with regard to the subject matter, such as the acts that the Prosecutor is describing with the other girlfriends, the jury may not construe them as aggravating factors or part of the aggravating factors, that they are only to be considered in how they pertain to the existence of mitigating factors.

THE COURT: I was going to charge that at the end anyway. Mr. Talasnik, essentially what I'm getting into is a request to do that also now.

MR. TALASNIK: If that's the Court's expression.

THE COURT: Are you finished in this area, are you going on to something

else?

MR. TALASNIK: Yes, I guess so.

THE COURT: Okay.

(The sidebar conference was concluded).

THE COURT: Ladies and gentlemen, before Mr. Talasnik goes on to the next question let me make a brief comment. You've just heard some testimony with respect to some incidents that apparently took place and you and I don't know a lot about but everybody else does, having to do apparently with the defendant and some other people on other occasions. You may if you find that evidence significant give it consideration for the purpose for which it was offered, and that purpose is limited to your evaluation of whether in fact at the time of the incident here the defendant was under certain circumstances that I've already discussed and will discuss again tomorrow under the -- operating with a mental disease or defect that impacted on his behavior or ability to do certain things.

Specifically what you can't do,

and I'm telling you very specifically so you'll understand what the limited purpose of the evidence was, you may consider it for the purpose I just described, whether it helps you to decide whether there was a mental disease or defect. What you can't use it for is any suggestion that that kind of evidence is itself an aggravating factor. Specifically the fact that the defendant may have had these kind of incidents in the past with other people is not an aggravating factor in this case. The only aggravating factors in this case that are alledged are the two that I have mentioned to you specifically, again that in the course of the homicide he created a grave risk of death under certain circumstances to Sullivan and also that the purpose for this killing was to prevent her or to avoid trial or punishment. You can't consider any of this evidence you've just heard as any type of aggravating factor. You may proceed.

BY MR. TALASNIK:

Q. What is a psychoactive substance?

A. Psychoactive substance is any drug

that produces a mental alteration in mental function.

Q. Would that include alcohol?

A. Yes.

Q. Would that include cocaine?

A. Yes.

Q. So that the phrase intoxication with a psychoactive substance means getting high or getting drunk?

A. Yes.

Q. Do I recall your testimony earlier that this intermittent explosive disorder can be triggered or heightened or activated through the ingestion of intoxicants?

A. Yes.

Q. Isn't it true that under the diagnostic criteria for this intermittent explosive disorder it specifically says that the episodes of loss of control do not occur during intoxication with a psychoactive substance?

A. Not in the DSM-3 criteria.

MR. TALASNIK: I'll have to have this marked.

(Exhibit S-58, page from DSM-3,

was marked for identification).

BY MR. TALASNIK:

Q. I'm going to show you S-58, the book that I asked you about earlier, DSM-3, and I want to focus your attention here on page 322 where it says diagnostic criteria for intermittent explosive disorder, specifically to letter D. Doesn't that say that it doesn't happen when there has been intoxication?

A. That's correct.

Q. So I guess that's a difference between my version and yours?

A. Yes.

Q. Okay. By the way, is mine newer than yours?

A. Yes.

Q. It was your professional opinion that this defendant was under the influence of this intermittent explosive disorder at the time of the death of Gloria Simonelli such as, and I believe these were your words, he was not as rational as he would have been had he not been under the influence?

A. Yes.

Q. You do not mean by that that he was so under the influence of that disorder that he was deprived of rational thought, do you?
A. No.
Q. So someone under the influence would still be capable for instance of acts of premeditation?
A. Yes.
Q. And the fact that, as you are aware from reading the discovery materials, that he got up at six o'clock that morning to go hire a driver, that's not inconsistent with being under the influence of the mental disorder?
A. Well, that's premeditation.
MR. PRESTON: Objection to the line of questioning. Premeditation has already been decided by the jury.
THE COURT: Sustained.
BY MR. TALASNIK:
Q. It was also your professional opinion that the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired as a result of being under the influence of this mental disease,

is that correct?
A. Yes.
Q. Now, by that, do you mean that the defendant at the time he got out of the car with the gun to approach the victim and her companion didn't have the capacity to appreciate that that was wrong?
A. No, he did have the capacity to appreciate that that was wrong.
Q. And certainly then you don't mean to say that he didn't have the capacity to appreciate the wrongfulness of pointing the gun at the two and pulling the trigger?
A. Correct.
Q. And certainly he would have been able to appreciate the wrongfulness of killing Gloria --
MR. PRESTON: Objection. None of these aggravating factors in that particular -- it goes to that premeditation aspect again.
THE COURT: We're not talking about premeditation here. Objection overruled. Talking about his capacity to appreciate the wrongfulness of his conduct

which as I understand is one of the aspects of the mitigating factors to which the jury's attention is being directed. Proceed.

BY MR. TALASNIK:

Q. So he certainly would have had the capacity to appreciate the wrongfulness of killing Gloria?

A. Yes.

Q. And the capacity to appreciate the wrongfulness of taking a shot at Patrick Sullivan as he was fleeing the murder scene?

A. Yes.

Q. Would he have -- wouldn't he have also had the capacity to realize that it was against the law to do these things?

A. Yes.

MR. TALASNIK: No further questions.

THE COURT: Mr. Preston.

RE-DIRECT EXAMINATION BY MR. PRESTON:

Q. Doctor, you indicate that you are using DMS-3?

A. Yes.

Q. The Prosecutor is using DMS-3R?

A. Yes.

Q. You indicate that there's a difference, that DMS-3R classifies rape as some sort of sickness?

A. Yes.

Q. And DMS-3 does not?

A. It's a proposed diagnosis in DMS-3R and in DMS-3 it does not consider rape as an illness.

Q. Do you consider rape as an illness?

A. No, I do not.

Q. So in that respect, even though DMS-3R is newer than DMS-3, is DMS-3R a better standard?

A. In my opinion no. I'm waiting for DMS-4 to appear. I say this seriously.

THE COURT: And we may still be in this case by that time.

BY MR. PRESTON:

Q. You would then consider DMS-3R as more appropriately -- excuse me, you would then believe that rape is more appropriately classified in anti-social conduct or crime rather than some sort of disease or illness?

A. Yes.

Q. And using that same professional

judgment, when you compare the application of intoxication to the intermittent explosive disorder, you prefer to use the standards of DMS-3 where it is present as a triggering device rather than the standards of DMS-3R which -- do you have that part?

MR. TALASNIK: Yes, still here.

BY MR. PRESTON:

Q. It indicates that it does not occur during intoxication, is that correct?

A. Yes.

Q. How reasonable would it be to conclude -- strike that. Without specific reports of specific acts of abuse after Richard Highlander's mother left the Highlander household, specific acts of abuse on Richard Highlander, Jr., that is, without specific reports about that, how reasonable would it be to conclude that the violence, the beating, the extreme conditions that existed in the household up until age five when his mother left suddenly stopped, ceased and were never present at all from that moment forward?

A. In my opinion that would be an

extremely unreasonable conclusion.

Q. The Prosecutor has asked you about relying on the reports of people that you've never seen. You've never seen police officers that prepared the reports in this case.

A. That's correct.

Q. Is it standard practice in your profession and in evaluating such reports to treat the reports of police officers as lies and consider them to be liars?

A. No, it's not.

Q. Do you consider their reports to be reliable?

A. Usually they're quite reliable.

Q. So in relying on them in this case the fact that you've never seen these police officers does not diminish the if value of the information contained in their reports, does it?

A. That's correct.

Q. Similarly you didn't meet Lucy Webb, did you?

A. No, I did not.

Q. Did you have an opportunity to view a

videotape of her?
A. Yes, I did.
Q. In terms of your profession in psychology, how helpful was observing her demeanor and observing the way she conducted herself, how helpful was that in determining the reliability of the information that she was providing on the videotape?
A. It was quite helpful.
Q. Was it almost as helpful as perhaps conducting the interview in person yourself?
A. Almost, not quite, but almost.
Q. And was the information that she provided on the videotape consistent with the report of Alfonso Associates?
A. Absolutely.
Q. And that report being reliable, do you have any reason to doubt the factual information that was contained in the other reports that they prepared?
A. No, I do not.
Q. How do you explain then Richard Highlander, Sr.'s statements in his report denying abusive treatment?
A. In my experience working with abusive

parents, denial is practically a universal phenomena.

Q. So in evaluating and coming to your judgment in this case, you didn't look at any isolated facts and take it as true or false just on that fact alone?

A. That's correct.

Q. You looked at it in the context of the whole situation of all the reports?

A. Yes.

Q. And you were looking for themes of consistency?

A. Yes.

Q. And it was that that enabled you to evaluate the various facts that were represented to you in the reports?

A. Yes.

Q. The words "rule out," do they have specific meaning in the medical or field of psychology?

A. Yes.

Q. And does "rule out" mean that there's an objective judgment that the disease is not present at all?

A. No, "rule out" means that there is a

suspicion that the disease is present and that further observation or diagnostic testing is required.

Q. If the disease was not present at all and the further testing had been accomplished, how would it be expressed in the report that the disease was not present?

A. There would be no mention of schizophrenia in the report.

Q. But let us say that somewhere in the report there was a statement that said rule out schizophrenia. Let's say that occurred in week one, that certain tests that they had to perform were performed and in the continuation of the report some conclusion was going to be drawn about the results of those tests. How would the results of those tests be expressed if the results were negative?

A. The final diagnosis would not include the mention of schizophrenia.

Q. Was there an opportunity for final diagnosis with respect to these Coral Ridge reports that you could see from the reports themselves?

A. The answer is yes and no. They did not keep Mr. Highlander as long as they would have wished because he escaped. However, there is a final diagnosis recorded on one of the forms.

Q. So you don't know whether they had the opportunity to perform the tests that they were talking about or not just based on the report?

A. That's correct.

Q. It's possible it was there, it's possible it wasn't there, you don't know?

A. Right.

Q. There's no question here of mental retardation, is there, Doctor?

A. None whatsoever.

Q. And is it of great significance in your evaluation or even sizeable significance in your evaluation whether the prescription of medicine for drug withdrawal was based on Rick's claim or based on some independent medical diagnosis?

A. No, it's not significant.

Q. It was just a factor that was taken into account?

A. Yes.
Q. Now, Doctor, I would gather from the Prosecutor's cross examination that everything a person is going to become occurs and is fixed in concrete by the time he's fourteen and a half years old, is that true?
A. No, that's not true.
Q. So that Rick's continual living with his father was a progressive development in his personality?
A. Most definitely.
Q. And the longer he stayed in that influence, the more severe the impact, the more deeply his father's personality became imbedded in him?
A. That's correct.
Q. Now, wouldn't the mother's personality have a chance to become deeply imbedded in him after she had left the household and was no longer present?
A. As I testified earlier the stepmother attempted to obliterate this child's memory of his mother by referring to her as a nobody and even denying that the figure that the child Rick Highlander saw outside the house

was his mother.

Q. So even if some impression had been made on this boy by age five years old by his mother, assuming that a sizeable portion of his personality had started to be formed in the direction of his mother, are you saying now that it was likely that the treatment he received from the step-mother and from his father after the mother had gone would have started to tear out that bonding, to tear out that adaptation of his personality to hers?

A. I don't think that it tore out the binding in the sense .. this child's feeling a very powerful yearning for the presence of his mother, but in terms of the identifications developing into the kind of person that his mother is through a loving identification with her, that most certainly was counteracted by the subsequent events of this man's childhood.

Q. Now, you had the opportunity to read the interviews that were conducted by the investigators from the Public Defender's Office with Richard Highlander, Jr. I believe that's what you testified to earlier,

is that correct?

A. Yes.

Q. And in response to the prosecutor's's questions you had agreed that he did not bring all this stuff up in those interviews?

A. Correct.

Q. Now, isn't it the common ordinary occurrence for a person with these painful memories to just want to tell them to a stranger who is not a professional in the field of psychiatry or psychology?

A. It depends to a very large extent on other factors. There are some individuals who have kind of a dependent personality who simply wish to unburden themselves, and there are other individuals who are extremely threatened by such disclosures.

Q. In this case judging from all of the materials that you reviewed, would you conclude that Rick would be the type of personality that would want to share this with strangers and with other people?

A. Most definitely not.

Q. So if he didn't want to talk about it, if he didn't want to tell anybody about it,

if he even didn't want to hear about it, that would be consistent with your evaluation of his personality?

A. That's correct.

Q. Even just listening to it would be more than he could bear?

A. Yes.

MR. PRESTON: Nothing further.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Nothing further, thank you.

THE COURT: You may step down. Thank you, Doctor. Take your documents. Mr. Preston.

MR. PRESTON: Judge, I have no further witnesses.

THE COURT: Defense rests?

MR. PRESTON: Defense rests.

THE COURT: Ladies and gentlemen, let me just indicate before I hear from Mr. Talasnik, I didn't mention to you earlier, I figured I'd do it all at once, there have been a number of exhibits received in this phase of the proceeding some of which you've already seen in connection with the

first phase and which have been readmitted or will be submitted to you again in this phase. In addition I have the admission of a couple of other exhibits in this phase that you haven't seen and let me outline for you what has been admitted into evidence in this phase of the proceeding, all of which as before will be sent into the jury room with you for your examination tomorrow.

We have a number of photographs of the scene specifically sixteen, no sense of giving you the numbers, but six of the original photographs that you saw in connection with the first phase of the proceedings which have been readmitted and which are available for your review in connection with this phase of the proceeding. In addition you will have again S-36 which is the set of documents that comprise the domestic violence order, complaint and order that was entered in the family court, you have S-37 which is the original indictment against Mr. Highlander for the assault on Gloria Simonelli in March, you have some of the bullet fragments that

were identified by one of the witnesses from the first phase as having been taken out of various places in the wall of the Greenhouse and you have S-44 which is the original assault complaint filed by Gloria Simonelli in March of 1988, I believe, in Margate.

In addition to those exhibits, which are all State's exhibits, you have two exhibits that have been received and admitted into this proceeding on behalf of the defense, specifically D-18 which is the letter that you heard reference to, a seven page letter, handwritten letter that was, as a subject of the stipulation, found at the Atlantic Palace the next day after the murder and you have D-10 which is the videotape that you saw here in the Court today. I will have sent into your jury room tomorrow, if you care to use it, a video recorder and monitor so that if you wish to examine any or all of that videotape you may do so. With that the defense rests. The State, as you know, earlier today -- I'm sorry.

MR. TALASNIK: Rested yesterday.

THE COURT: Right. Please forgive me. That was not meant as a joke. Earlier yesterday the State rested. Mr. Talasnik, do you have anything further to proffer at this time?

MR. TALASNIK: Nothing, thank you, Your Honor.

THE COURT: All right with that then both parties have rested. That means that the presentation of evidence in connection with the matter is completed and it means that you are finished for the day. Now, let me once again at the risk of sounding boring or repetitious make a couple of what I hope you will consider to be very important remarks. Obviously you're going to come here tomorrow and make a very important decision after giving the matter substantial thought. Equally obviously you have already given the matter some thought, to be sure. In connection with the first phase of the proceedings, you've already discussed it and reached a decision with respect to the issues that were presented to you then.

You will leave here tonight and

go home and because you are human beings you will give thought to what you have heard and seen in the last two days and you should do so. I encourage you to do so, but I also remind you how important it is that when you come in here tomorrow that you first have the ability with an open mind to listen to what Mr. Preston and to what Mr. Talasnik will have to say, and you of course will have to listen carefully to me. There are some concepts with respect to how you're going to reach your decision that you haven't heard yet that will be brand new for you tomorrow and it's important that you have an open mind so that you'll be able to evaluate and understand those concepts. Then when you get into the jury room to deliberate it is, as you already understand, very critical that you be open to the remarks and comments and suggestions of your fellow jurors as you will want them to be open to yours.

Therefore, while you give consideration this evening to what you've heard, keep an open mind, do not reach any final conclusion. There's a great deal more

of importance that you need to hear before you can reach the point where you feel comfortable in saying, "I know what I think and I know what I feel." I will tell you that it has not escaped my attention or that of the attorneys that this is we think a very fine jury in the sense that we don't know you personally, obviously, but I feel and I believe the attorneys feel, I know that they have indicated to me that you have been attentive and that you have been involved and that you understand and have paid careful attention to what has gone on.

It's with that confidence that I again remind you of the critical importance, and I know how difficult it is, but of the critical importance that for yet another day you make certain that you do not share any thoughts or any conversation about this matter with anybody, among each other, with your family or with anybody else, nor of course should you permit anybody to discuss this with you. By now I'm sure you understand the sensitivity of what I've said so many times and you understand how

important it is not just to the defendant and to the State, but to each other, so you can have a clean and absolutely unbiased shot at doing what you have to do,, and I remind you of that again tonight on what I expect will be the last evening that you will have to undergo that kind of stress, and I understand that it is that kind of stress.

With respect to tomorrow morning, as you heard, the parties have rested. All of our work in terms of preparing for tomorrow morning is completed. Therefore, we will be able, when you get here tomorrow morning and you are ready, to start immediately. What you will hear tomorrow are the closing arguments of counsel, following which you will hear from me with respect to my remarks. I will not be as long tomorrow as I was last week and then we will turn the matter over to you, which as I've told you earlier today I anticipate to be sometime probably in the latter half of the morning tomorrow, so with that, please be here at nine o'clock ready to proceed, report to your usual places and we'll see you at that time.

(Jury leaves the courtroom).

THE COURT: Any other matters that you wish to bring to my attention?

MR. TALASNIK: Yes, Your Honor. When Your Honor heard the defendant's application yesterday to not have to be present during the course of these proceedings, Your Honor, I believe, satisfied himself that the decision was knowing and voluntary. The one question that you I assume consciously did not ask the defendant was why he did not want to be here. Defense counsel in his last few questions today indicated to the jury a reason why his client was not here. Your Honor has already instructed the jury that they are to draw no inference whatsoever from the failure of the defendant to be here. The questions were asked and answered. My request is that I not hear anymore of that during a closing because there are all sorts of reasons that we can speculate about.

MR. PRESTON: Judge, I didn't intend that to be the discussion of the jury's presence here. I have no objection

and I'm the one who proposed that that instruction be given. I am not discussing it in my closing. I have no intention to. My questions were directed, and I think it's a call of bad faith on my part, my questions were in response to the prosecutor's cross-examination about that issue.

THE COURT: No, wait a minute.

MR. PRESTON: And it was why the interviews weren't discussed.

THE COURT: Before we get out of hand at five o'clock in the afternoon on a day when everybody has been under great stress, let me say, number one, that I don't think it was a call of bad faith on your part; number two, that I got exactly the same message that Mr. Talasnik did, I don't think it was necessarily improper and I don't mean by what I say he said or what I am saying to suggest any impropriety. I think his request at least needed my attention. You've already indicated that you have no intention of discussing it in your closing, which as far as I'm concerned is the end of the matter, but I don't want you to feel that it was

inappropriate of him or even me because I heard the same thing to think that. It was not, but the issue is resolved because I think the question that you asked was in good faith, the issue is resolved as far as I'm concerned with respect to the eliminating it from argument, that's all.

MR. PRESTON: I don't want to hear any comments on the part of the Prosecutor either on that subject. I think Your Honor's instructions are suitable and I don't want to hear any business about this is obviously staged, blah, blah, blah. I don't need to hear that. The question that was directed was he didn't want to hear the interviewer discuss these things.

THE COURT: It dawns on me, Mr. Talasnik, that I need to ask you whether you intend to make any reference to it in your closing.

MR. TALASNIK: Certainly not, Your Honor.

THE COURT: Then I think, gentlemen, that's the end of it. Anything else that needs my attention? I would like

you both here at 8:45 tomorrow morning to discuss with me anything else that needs my attention before we close the matter. Have a nice evening.

(Adjourn)

C E R T I F I C A T I O N

I, GERALD W. ABARNO, A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER OF THE STATE OF NEW JERSEY, DO HEREBY CERTIFY THAT THE FOREGOING MATTER IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN AT THE TIME AND PLACE HEREINBEFORE SET FORTH.

GERALD W. ABARNO, CSR
OFFICIAL COURT REPORTER
LICENSE NO. XI00326

DATE: 10/10/89

JUKES
Judge

A-59-89T4

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
ATLANTIC COUNTY
INDICTMENT NO. 88-06-1553-C

A-59-89T4

STATE OF NEW JERSEY,

Complainant,

-vs-

RICHARD HIGHLANDER,

Defendant.

TRANSCRIPT OF
PROCEEDINGS

RECD
APPELLATE DIVISION
JUL 11 1990
RECD
Clerk

Mays Landing, N.J.
June 28, 1989

B E F O R E:

HON. STEVEN P. PERSKIE, JSC.

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQ.

FILED
APPELLATE DIVISION
JUL 11 1990
Clerk

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

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THE COURT: For the record, a couple of housekeeping matters. First of all, I don't believe last week when the judgment came in on the non-capital counts that I set any sentencing proceeding. I did order I believe a pre-sentence report in theory to be held until the determination of today's proceedings. Irrespective of the outcome of today's proceedings, sentencing on the non-capital counts of the indictment will be scheduled on Friday, July 21, 9 o'clock here in this Court. In the event that the verdict today requires the imposition of a term of imprisonment [illegible] me, that sentencing proceeding will also take place at the same time. In the event that it does not, I will on July 21 sentence on the counts of the indictment for which judgment has already been entered. That's point one.

Point two, Mr. Preston, you had a request or application about the discussion yesterday regarding the fact of which I took judicial notice.

MR. PRESTON: Yes, Judge, there were two items that I advised Your Honor that

I would bring to the Court's attention this morning. The first was, I had requested yesterday the instruction or the introduction as to the mortality table entry to be used with respect to Mr. Highlander. Your Honor indicated that he would take judicial notice of the entry and advise the jury. On more prudent reflection overnight I find that the evidence is neutral, really, and obviously there's a lot of discussion that can be theorized and speculated about either way in this case. It's not one of those in which the jury could reach any firm conclusion, and rather than get into lengthy speculations and lengthy arguments and probabilities, I think that that would on more prudent reflection just serve to divert the jury's attention from the real issues in the case and I would withdraw my request and ask that the instruction not be given.

THE COURT: And your recollection which apparently is consistent with Mr. Talasnik's and not with mine, but mine is not reliable either way, is that I didn't say anything to the jury.

MR. PRESTON: That's correct.

THE COURT: I say it that way because I had intended yesterday when I introduced to the jury the exhibits in evidence, I had intended to refer to them the fact of which I had taken judicial notice. Apparently according to you guys I did not do so and that's I guess in retrospect fine. It was not my intention today to make any other reference to it. Therefore as far as I'm concerned the subject the closed.

MR. PRESTON: And the only thing I'm talking about is the specific number of 40 years in the mortality table.

THE COURT: 41, I believe.

MR. PRESTON: 41. I don't think that would prove any point.

THE COURT: Okay, it had not been my intention to comment on it today. I thought I did yesterday. If I didn't, as it turns out your interests are served and that's fine.

MR. PRESTON: Thank you. The next item, the jury has already seen, used, handled and done everything possible to the

jury verdict form which they had in the first phase. I don't think there's any prejudice in giving it to them again in the fact that they're going to be shown something new. They are the generators of what is important on that form. Your Honor today is going to give some instructions about how this phase is different from the last phase and how they are supposed to distinguish what they did back then from what they do now.

With respect to that, I would ask that they be given the jury verdict form again which they completed in the first phase so that they will have available to them something to assist them and something which I think is very important to assist them in helping them make the distinctions that Your Honor is going to instruct them on, in helping to make distinctions between the premeditation and the heat of passion and the attempt to kill and those things that they considered last week and the new issues that they're going to consider this week.

I think it will help them. It is probably the best help that I think we can

give them in terms outside of Your Honor's instructions in focusing their attention on those distinctions, and as the Court knows from our previous discussions there were phrases in the mitigating factors which specifically again referred to not a defense, with respect to two mitigating factors, and I think it's important that the jury understand the depth of what that phrase means. It's a very convenient phrase for lawyers to use because there's a whole legal environment that goes with it, but the jurors don't have that legal environment and the quick reading of the instruction, and I don't mean to be disparaging, but I mean Your Honor's instruction is not going to take four years of law school to give. It's not --

THE COURT: Sure took four years of law school to write, and by the way, I did have four years of law school, although the last year didn't have very much to do with this. It had to do with another subject.

MR. PRESTON: I think that with Your Honor's instructions that it's really

necessary that they have that tool to help them make those distinctions.

THE COURT: Mr. Talasnik.

MR. TALASNIK: Your Honor, I think that giving them their old verdict sheet from the first phase of the trial that has been over almost a week now runs absolutely counter to what Your Honor will otherwise be instructing them, that the fact that the defendant has been convicted of murder is not in itself an aggravating factor, that the question of whether there was a knowing or possible creation of a grave risk of death is different than the issue of whether there was an attempt to kill. I can see no rational purpose for giving them that which they have disposed of some six days earlier and for that reason I object to it going into the room.

THE COURT: I appreciate Mr. Preston's approach. I don't have the responsibility as he does to evaluate what is in the best interest of the defendant and I certainly acknowledge that that's where he's coming from. In my view it would be an error

for me to do what he wants me to do. One of my main jobs here this morning is to assist in the process of shifting the jury's focus from that which they have already decided to that which is before them today. There are a number of references in my charge where I make the effort to help them to do that and I think that providing them the verdict form from last week would be counter productive in that respect.

I think it's important that they move from the question of guilt to the question of punishment. Those are obviously related concepts, particularly since the aggravating factors in both instances -- well, in one instance relates specifically to the circumstances of the offense and the other to its motive, but I think it would be inappropriate for me to physically give them the verdict sheet. They're already presumed to know the decisions that they made. Counsel may in summation remind them of the decisions that they made to the extent that such reminding is appropriate in this context, and it will be my role as you've

seen in my jury charge to move them beyond that which they've already decided to that which is before them today. For those reasons the application will be denied. Are we ready, gentlemen?

MR. PRESTON: Ready, Judge.

MR. TALASNIK: Yes, Your Honor.

(Jury returns to the courtroom).

THE COURT: Ladies and gentlemen, good morning. Mr. Preston, you may proceed.

MR. PRESTON: Thank you, Judge, Mr. Talasnik. Mr. Davis, you're probably sitting there wondering what I'm going to say, and I think you know that what I'm thinking is are you going to kill him so, I hope you've had some patience with the time we took yesterday and are going to have some patience this morning as you listen to my final remarks. A lawyer in this situation can't help but feel that there is some sense of responsibility in what he might do or what he might not do that could mean the life or the death of a man, so please, I ask your

patience.

Last night and a couple nights ago I sort of anticipated that that sense may weigh upon me fairly heavily this morning so I made sure I went through the things that I wanted to say, got them down on paper to help me, so if I refer to them an awful lot I ask you to excuse that too.

The Judge in his charge to you is going to tell you that this phase of the trial is a whole distinct and divert one from the last phase of the trial and there's no way that I can emphasize that too much. I said it in my opening, I'll say it to you again now. I am not here by anything that I say to have any dispute with you about the fact that Rick Highlander is guilty of intentionally killing Gloria. I don't dispute that in the least.

I don't mean to say that there was any question that your verdict last week was a just verdict and the trial today is not even about whether he should be punished or not. That's already been decided. You decided last week whether he should be

punished. Your verdict of guilty said that the very least that's going to be imposed on him, the very least is that he's going to be behind bars for 30 years. Now, the Judge in his discretion can extend that to life imprisonment. The Judge still has to sentence him on the other charges that you convicted him of, so all of that is present from your verdict last week. There's no question Rick Highlander is going to be punished and that he deserves to be punished. I'll start off just there.

Now, when you see how severe that punishment is, you ask yourself, well, why are we hear then if he's going to be punished that severely? Well, we're here because the legislature has made available a death penalty in response to a whole lot of law cases and everything else, the laws in this country have determined that there can be some classes of cases which are so severe, so outrageous that the death penalty is the only fitting and appropriate punishment for a case like that. The laws of this country, the laws of this State do not say that all

murders fall into that category. As a matter of fact the laws that Mr. Talasnik must follow, that I must follow, that the Judge must follow say that what the jury has to do and the way the law has to be structured is that you have to sort out the few cases, the few murder cases, and it's only for murder cases, in which the death penalty is the only fitting and appropriate punishment from the many cases, the many murder cases in which it is not. That's the philosophy, the legal philosophy that we all have to operate with, to separate out the few from the many, and in this trial you have to decide if Rick Highlander's case, if Rick Highlander's killing of Gloria was one of those few for which death is the only fitting and appropriate punishment.

That's your job. It's as simple as it can be put. Unfortunately what you're going to have to do to get there isn't that simple and because it isn't that simple it protects the many who don't deserve death and it protects you in making your decision, from making a wrong decision. Now, because

the death penalty is available it doesn't mean that it's required in murder cases. As I said we're separating the few from the many. No place in our law, and the Judge won't instruct you that there's a presumption that death will be imposed in this case. It's an option, an option which requires your serious judgment. To do it would be to impose the ultimate penalty and to do that your decision would have to have the utmost, the highest degree of reliability that that was the right decision.

To begin your consideration of whether you should kill Rick, the State can use, can produce two reasons, can argue those two reasons. Can they prove them? I'm going to submit to you that that's highly questionable. On the other hand, Judge Perskie is going to explain to you that there are mitigating factors in this case. These mitigating factors are no attempt by me to lessen Rick's guilt in any way. He's guilty, it's an established fact, but we are going to discuss here the fact that the law provides that there are degrees of responsibility,

that you not only in sentencing consider guilt or not guilt, but you consider the whole of the circumstances surrounding the case and the defendant.

In this instance, ladies and gentlemen, you have the unique opportunity, you are doing what otherwise only a Judge would do because those are the things that he has to take into account when he sentences a defendant in another case that's not a death case, and so in making his decision about the degree of punishment he would be making the kinds of decisions that you're going to be making now. The question then is whether with these mitigating factors and whether, if there is an existence of aggravating factors, between those two whether you can say beyond a reasonable doubt that killing Rick is the right thing to do in this case.

Now, in the mitigating factors some of the things that were talked about on the witness stand and some of the things that you're going to consider are going to sound an awful lot like what you heard last week in terms of what you then considered,

intoxication, about the kinds of evidence you heard with respect to heat of passion, that type of thing. You considered them last week. They were presented to you last week as legal defenses. They were presented to you last week as a viewpoint by which Rick's guilt should be reduced or eliminated. You decided those issues. The evidence was presented to you, you decided those issues. You decided, decided correctly that under the level of evidence that you had last week with respect to the high burden of proof that you had to consider, that they didn't measure up. That evidence didn't measure up to the point where Rick's guilt should be reduced.

You decided that correctly last week and nobody is here to argue about that decision, but what we have to present to you this week is not only the things that you heard last week, but more importantly all of the background that you heard this week concerning Rick Highlander, and with all of that additional testimony, and I submit to you more important material, we're not looking at a high burden and a high level of

proof to reduce his guilt. We're only looking to see if there's enough evidence that in your minds it's a reason that you shouldn't kill him; not that you shouldn't punish him, not that he shouldn't be punished severely, but that you shouldn't kill him and that's the difference.

The Judge is going to explain to you that difference, that this week these standards don't have to reach the level of whether it was a defense, whether it reduced his guilt. Your correct decision last week that it didn't is not being argued about here today. It's only whether you should kill him. Now, that applies, as I said, both to his emotional state, to his intoxication, and there's another thing that you're going to consider this week that you didn't consider last week and that's the issue of mental disease.

Now, some of you might think, well, if Rick had a mental disease, why didn't you tell us about it last week? Why didn't you bring the doctor in here and say he had a mental disease? Ladies and

gentlemen, it would not have been right or proper for us to do that because if you heard the doctor's testimony, that mental disease really didn't amount to insanity, didn't amount to the kind of mental disease that reduces his guilt. That would have been wrong for us to do that in the guilt phase of the trial, but here in the penalty phase the standard is different.

As the Judge is going to instruct you, he's going to give you the specific standard to apply in this phase of the trial and here in this phase of the trial we have to show that his capacity to conform his conduct to the standards of the law was impaired, not that it was prevented. It's not that level, but that it was affected, that it was affected. It doesn't have to show that it was the cause of the action either. The Judge is not going to tell you that, that his mental disorder, his disease caused him to kill Gloria. That's not what he's going to tell you either.

What he's going to tell you, the Judge is going to tell you is that it was

present, it had to be present and it had to be present in such a way that it affected his capacity to reason, to control his actions so that he wouldn't kill Gloria. It doesn't have to mean that the decision by Rick not to kill Gloria was impossible, that he couldn't do anything else. That's not what we're talking about, so this level, this burden that we have is a burden of producing evidence. It's not a burden of producing anything absolutely or even by a preponderance of the evidence, although I submit to you that we have shown it very clearly and convincingly, because even though Mr. Talasnik cross examined the doctor, the State didn't bring anything in to contradict what he said. That was it. When the doctor finished, that was it. There was nothing else that was brought in against what he said and I think that's significant. You can take that into account.

Now, you heard Rick's psychological history and his physical health history and they were recounted to you by the reports that you heard from the social worker

and from the psychologist, from Doctor Dyer. Now, in connection with that I want to make one comment about their reliability because the Prosecutor seemed to really want to attack that, so I think I should address it now. Nowhere in any of the things that they did did they go beyond what was commonly accepted in their profession. The reports that were provided by the social worker were done competently and professionally. You heard Doctor Dyer tell you about that, that he uses those all the time in his work and they have to rely on them and that is a standard part of the way our society operates in gathering information, such as Doctor Dyer says he testified in these cases of child abuse when the State was prosecuting. They're commonly relied on, they have to be relied on, and these workers, social workers, people who do this are trained to make accurate reports, to make accurate judgments. Now, that's with regard to the reports of Alfonso Associates.

What else did he rely on, the doctor? He relied on the reports of the

Prosecutor's Office and the police. Now, perhaps Mr. Talasnik wants you to believe that the Prosecutor's Office reports or the police reports are unreliable, but I'm not sure that you can accept that and still believe the evidence that he presented in the first phase of the trial. I think that's a problem and I ask you to consider that when you evaluate the kind of criticism he wants you to consider in assessing the reliability of the testimony of the experts.

There's one other thing that I have a problem with in terms of assessing what's reliable and wnat's not in terms of what the doctor relied on and what he didn't. You heard the Judge tell you in a stipulation of facts that a valese, a briefcase was ceased from the Atlantic Palace on the day after the murder, that the valese had been left there at 10 o'clock on the morning of the murder and that it had been taken into possession by the Prosecutor's Office and that the letter, D-18, which you will have, was one of those things that was ceased. Now, you heard Mr. Talasnik's cross

examination. It was undated, it was unsigned. How do we know that it was Rick? Well, ladies and gentlemen, did the Prosecutor seize and keep that letter all this time because they thought it was written by Santa Claus? No, no, that's not the reason. You can take that into account.

You're going to get a chance to read the letter yourselves. You're going to have a chance to see some of the interior parts of that letter, the reasons why Doctor Dyer also considered that it was fairly reliable that that letter was written by Rick, that that was most probable, that there was really not much question about it that it was written by him. Yet the Prosecutor wants to question that it was. These proceedings today involve the taking of a man's life. Can we do that in any other way than one which bears the utmost integrity? Can we do that? I submit to you no. These mitigating factors have one other thing to be considered. Ordinarily in a criminal case you're instructed that sympathy is going to play no part in any of your decisions, but in

a case in which you're going to decide whether to kill Rick Highlander, the State has said that you can't take sympathy into account in a limited way. The sanction of death is so extreme that if any of those mitigating factors produce in you sympathy, compassion, mercy, that you can and I say you should take those into account when you make your decision.

I want to look now at what the State has produced for aggravating factors. Now, when Mr. Talasnik made his opening or excuse me, when he made his closing in the guilt phase of the trial he argued very effectively to you using examples. I was sort of stunned that he would do that, but I wanted to thank him perhaps for pointing out to me that there are examples here that I should point out to you about the photographs. The two aggravating factors, creating a grave risk of death to another and doing it knowingly and intentionally, I think in our experience in the past year or so we can think of some instances and remember some instances when that was just what the problem

was. A man walks into a school yard with an assault rifle and not just intending to kill one person sprays the whole school yard full of children.

Now, did he intend to kill anyone else besides this one victim? You might not say that he intended to do that, but did he know with practical certainty that others would die? Certainly you could come to that conclusion. That's a place where that aggravating factor should apply. That type of murder is one of the few, ladies and gentlemen, one of the few. I'm going to distinguish in a minute how this case is very much different.

We know from our experience that there are real problems with our society. We know that there are things such as the Cosa Nostra and other organized crime and we know that there are instances in which some big gun says wipe him out. I got to go to trial tomorrow, wipe him out and that's all that's involved, a total inhuman, calculated decision that has nothing else that's a part of it. That kind of cheap

value for human life is despicable and that's what the second aggravating factor is about, preventing the testimony of another.

I'm sure that there are all sorts of examples and there are borderline examples. There are all sorts of explanations, but you've got to remember that you're deciding the few from the many and do you want to make a decision on something that is a borderline, do you want to kill a man on a decision that's close? The law won't let you because the law says you've got to find those aggravating factors beyond a reasonable doubt. In this case these aggravating factors, ladies and gentlemen, have bits of evidence that tend to make them look like the real reasons we want to impose the death penalty and the few cases in which it should be imposed. They have bits of evidence. I don't think that you or anyone wants to make that kind of decision based on bits of evidence.

I'm not saying that they aren't there, I'm not saying that they don't sort of stack together and form some sort of cloth,

but what they don't do is they don't present to you the factor beyond a reasonable doubt. That's the difference here. You have to meet that standard when you find an aggravating factor because as you know from what the Judge has told you and will tell you, the legislature has defined these categories, these aggravating factors as worthy of the death penalty, and when you find an aggravating factor like that you're doing it with the knowledge that that's what the legislature is saying.

Let me get into them specifically. Did Rick Highlander intentionally or knowingly create a grave risk of death to Patrick Sullivan? The evidence on which the Prosecutor will ask you to rely in meeting his burden you heard last week, you already heard all of it. It was in your minds when you came back with your verdict. Now, I do not say that you decided that issue last week because we're deciding different issues this week, but I do say that I have to look at what you decided last week and see if there's anything important that I

should talk to you about and I think there is. Last week you said clearly that Rick did not intend to kill Patrick Sullivan and then you said that he did not intend to cause him serious bodily injury and then you said that he did intend to cause him bodily injury with a gun. Those are the three things that you decided last week.

I wasn't in that jury room with you. I can go on some things and I can hope that my reasoning process is good and that what I'm saying to you is going to make sense to you in light of your discussions. The Judge defined serious bodily injury as that which involved the risk of death. You rejected that. The Judge defined bodily injury. It did not include the words risk of death. The Judge defined deadly weapon because you found an attempt at bodily injury with a deadly weapon. Deadly weapon was an objective factor that did say something about risk of death, it said something about the weapon itself having a risk of death.

I suggest to you that what we have -- no, I think it's stronger than

that. I don't just suggest to you. You are here to decide what was actually in Rick's mind, not what should have been, not what might have been, but what was actually in Rick's mind with regard to that creation of a risk, and in doing so you have to take into account the difference between what the ordinary man should have known and could have intended and what Rick actually had in his mind given his psychological condition at the time, what he actually had. That's what the statute requires, knowledge, that test of knowledge that says he actually had it and the results were practically certain. That's the test that the Judge is going to tell you about.

Ladies and gentlemen, given all of that I can't see how you can say that Rick intentionally caused a grave risk of death. Let's take a look at whether he knowingly caused a grave risk of death. I asked that question of Doctor Dyer. I asked him, well, Doctor, you looked at the police reports, you looked at all the reports there, you looked at the reports about Rick's -- the reports

that you relied on to determine his psychological condition, you looked at all of that, you read the transcript of the witnesses of this trial. Now, after you looked at all that, you're a psychologist, can you tell me with any degree of certainty what Rick was thinking? Was he actually -- did he have practical certainty about Patrick Sullivan having a great risk of death? The doctor couldn't tell you that. He couldn't say that. He said, no, I can't tell you that. With all his psychological expertise he couldn't say that, and I suggest to you, ladies and gentlemen, that none of us can say it, but that's what the State has to prove. The State has to prove beyond a reasonable doubt that very thing, that he intended or had actual knowledge in his mind at the time that Patrick Sullivan was under a grave risk of death, that his actions were causing that.

What about the other factor, preventing her from testifying? There was a lot of talk last week in the evidence that the State is relying on about how Rick feared

going to jail, now he stated it all the time and how he stated he was going to kill Gloria. Not just talk. That was the evidence. That was the evidence that you heard and played a part in your verdict, but was it the only evidence? No, it wasn't. There was evidence about his frustration, about his anger, about all of those other things which were in Rick's mind that also came into play. Now, with the testimony of Doctor Dyer and the material you learned from Miss Alfonso, you see how much a part of Rick's thinking those other things were. Jennifer Saitz last week and Bobby Brooks, they even said that when Rick was talking about all this, his emotions were all mixed, they were all sort of jumbled together, even though he talked a lot about the jail, even though he had that macho talk.

Doctor Dyer told you about his psychological condition that would only let him talk about the macho side of it, that wouldn't let anybody know what a wounded and messed up and tortured person he was inside. He couldn't do that. That would have meant

that he wasn't really a man. That was part of Rick's psychological condition. Just because his talk focused on one thing doesn't mean that his mind didn't have something else in it and those something elses were continuing to escape as much as he tried to hold them in, so I asked Doctor Dyer, well, Doctor, can you say with any degree of certainty whether the preventing of Gloria's testimony was the principal, the primary reason for killing Gloria. You can't, he said. The doctor said, I can't say that. Might have been, might not have been, but I can't say that. None of us could say that, and yet the State's burden of proof here is that you have to believe beyond a reasonable doubt certain enough to impose the death penalty that it was, that it was the prime reason.

You see, I'm not denying that the things that go into these aggravating factors that there is evidence of, that there are pieces of evidence of, there's some cloth to it. What I'm saying is the State is telling you, the laws of our state are

telling you that you've got to be sure beyond a reasonable doubt before you can find the aggravating factor, and the evidence that we have doesn't get that high, doesn't get beyond a reasonable doubt, and so really the things which should graft this case are not really there, not really there to the degree that the State by our laws says should be in order to even begin considering the death penalty.

Maybe you had some feelings about that before as you were listening to the evidence. Maybe you had some wonderment about that before, without having the law explained to you by the Judge. Well, now you know if you had those feelings that you were on the right track, that you just didn't know why. The Judge is going to tell you that the only reasons you can use are those two reasons if they even exist for imposing the death penalty, but in a capital trial all sorts of things can creep in that sometimes we don't know are creeping in and I think I have an obligation to at least mention them.

Judge Perskie is never going to

tell you that you can use revenge as a reason to kill Rick. That feeling is sometimes disguised. Sometimes we convince ourselves that really what we talk about, that society would be better protected, sometimes we can say, well, it's the defendant. Sometimes we can impersonalize him. We can say he's not flesh and blood and it makes killing easier, but we have to consider all of the evidence in the trial and we have to consider the evidence about Rick himself, and after it's all been heard, I'm not going to tell you now that Rick was a great guy, that he had a great attitude or anything about what he did was good, that he was a good person. I'm not going to tell you any of that. He wasn't, but the worst reason in the world to kill him is because you personally dislike him. To do that would be to disobey the law where Judge Perskie tells you that only those two reasons could be used.

It would also be morally wrong to do it because what you would be doing is you would be using your feelings of rage and prejudice, your emotion of outrage in order

to make that decision. Judge Perskie is going to tell you that your passion, your prejudice, nowhere in this case should it play any part, so anything that looks like it's appealing to that sense of passion or prejudice beware of, beware of, please.

Now, I tell you that the sentence of imprisonment is harsh, and how do I mean it's harsh? You heard that Rick was born August 10, 1957, he's now almost 32 years old. Nobody can guarantee how long he will live serving his sentence or really what that sentence length is going to be beyond the 30 years. You know that the Judge could go up to life, you know that there are additional sentences to be passed, but you don't know what they're going to be and it's not your job to guess at what they're going to be. You just know that it's there.

Could Rick die in prison? Is it the most probably thing? Well, if there is a possibility that at some advanced age he'd be released, do you think that's a source of hope, that that's a source of mercy in his sentence? I don't think so. Think

about it for a minute. At that advanced age he gets out, what does he have? Has he earned a pension to retire on? Has he accumulated anything in his life that will make those old age years worth anything? Society has taken everything from him as the price for what he did and he sits there and he's punished again because he has the knowledge in his mind of what might have been and what can never be and those last years even without bars, if there are those last years, will be hell.

What else will punish him about prison? You heard the testimony in this case about something special that will punish him and I suggest to you it's the cruelest punishment of all. Doctor Dyer testified that Rick was seriously deprived of love and affection at the critical and most formative years of his life, deprived in a way that is brutal, psychologically abusive. The violence that he was exposed to, his mother who he often witnessed battered, even raped on the one occasion that we know of, the woman who because of Rick's heart problem was

most tender to him, suddenly and beyond the comprehension of a five year old abandons him. We know she didn't really want to abandon him, but how is a five year old going to take it? Doctor Dyer told you about that. The rest of his life all of his relationships with women there's a driving search to fulfill a need that came out of that crushing experience. His history, his girlfriends, a history of love in which even when it was returned is not enough, the pattern of learned behavior from his father about his own inability to control his emotions, inflicting violence, mental, physical and emotional, from the very persons he wanted to love him back. It's irrational. That's not a planned thing. That's a man whose mind has been destroyed.

That need is never going to be met in prison, never. Where are you going to be in the next five years? Where are we going to be? Some of you are young enough, you're getting married, you'll have your children. Where will Rick be? In his prison cell. What about the next ten years, where

will you be? Second honeymoon with a husband or wife? Where will Rick be? In his prison cell. How about fifteen, twenty years from now, where will you be? Watching your son or daughter graduate from high school or college. Where will Rick be? In his prison cell. 30 years from now where will you be? Enjoying your grandchildren, your retirement, the good things that life has produced for you. Where will Rick be? In his prison cell, and probably beyond Rick will be in his prison cell. For the ordinary person that would be tough to take. For a person that has the kind of need that Doctor Dyer testified to about Rick, that has to be hell.

Ladies and gentlemen, the Prosecutor wants you to assume the responsibility of killing Rick Highlander. Is the difference in punishment of Rick Highlander between killing him and what I just described to you, is that worth taking on that responsibility for the rest of your lives? Is it worth it?

I want you to think for a

minute about the reliability of the doctor's testimony, of his evaluation about Rick's love, his need for it. At several points the Prosecutor severely questioned that in his cross examination, and so is the doctor's evaluation reliable? The records that he examined were voluminous and they were in accordance with all the accepted standards of his profession, but he told you he could only answer specific questions. He couldn't give you a general evaluation because Rick wouldn't be examined, he wouldn't be examined.

Doctor Dyer told you that that was consistent from what he found in the reports with someone who had that experience who would not want right off to have someone come in and start probing and dredging up those experiences, and it was consistent that Rick would not want to be examined by the doctor. The doctor didn't base his evaluation on that, he just said it was consistent. He had just said it was part of what one would expect to find. Your verdict of guilty in the murder and the sentence of

imprisonment has already put an end to Rick's disgusting and reprehensible behavior, stopped it. He's never going to have an opportunity to do that again. You don't have to worry about that. In some speculative way, many years down the line you might be able to speculate about it, to guess about it, but is it a real thing, is it something you can really take into account? I suggest not. Rick has behaved that way to women. There has been no testimony really that any of this behavior was generated between men. I don't know whether the Prosecutor wants you to think that there are women in our prisons, that we have co-educational institutions, but I think any argument about that behavior in the next few years is preposterous.

You've already heard the evidence from the last phase of the trial about his emotional condition. You heard what the Doctor said about his emotional condition in this phase of the trial and I urge you to find that mitigating factor. I don't need to go through it all with you, I don't need to enumerate it with you. I think

it's fresh in your mind from yesterday. He had all of those strong feelings present in him when he committed the act, when he killed Gloria and I urge you to find that mitigating factor.

As to the second mitigating factor, there are two elements on your verdict sheet, one of the mental disease. The doctor told you what that disease was, the burden is that it just has to be present and has to be present in such a way that it influences his capacity, his capacity to conform his conduct to the requirements of the law. The Prosecutor produced no evidence that it was not present and was not able to obtain from the doctor any doubts as to the level of evidence that was good enough for you to find that factor.

The state of intoxication I submit is again the reduced standard that we're talking about here. You heard all the testimony of Mickey Chambers. Last week you heard about stopping at the Greater Pittsburgh Bar the morning of the murder, Rufus Duff's house, more beer, another

restaurant, they drank some more, Rick's speech, Mickey said, was becoming reckless and a little confused. After spotting Gloria's car at the Greenhouse they went and got a drink at Piggy's or some drinks at Piggy's, didn't say how much. There was more drinking and cocaine. Mickey Chambers testified that he was semi-intoxicated. The Prosecutor last week asked you to believe Mickey Chambers and I ask you to believe him this week.

The last aggravating factor is really several. I'm not going to go through all the testimony. I just want to sort of point out the categories, that's all I want to do here. There was a history of abuse and battering in his early years, the sense of his mother's abandonment, really their separation, the drug and alcohol abuse with Rick and some indications of the alcohol abuse of his father, the environment that he lived in. Hearing all of that evidence death is not the only fitting and appropriate punishment, it's not the fitting and appropriate punishment in this case.

A couple of last thoughts. The decision you make is an individual one and I think I only mention it in this case because you've let us know, you've had a chance to I don't know if you call it make some friendships or some acquaintances, had a good relationship with each other during this week. That's something to be envied in a jury, but the decision you make is an individual one and I know that you will each make that individually. It wouldn't be fair to anyone in this case if a friendship or good feeling you had towards one another made you surrender an honest belief and I don't think you will.

Lastly I want to make one distinction that I think is important between last week and this week. A lot of what the Prosecutor is going to argue about with regard to at least one aggravating factor is going to involve the idea of intent to kill and of premeditation. You decided that last week. It's not to be questioned this week, but the mental state, the intent to kill is not the same as the motive, the motivating

factor. What we're talking about this week is the motivating factor. It's a very seductive and a very wrong and bad argument to try and mingle the two together and measure the two together so that the motive becomes confused with the intent to kill. They are very separate ideas and I just want to urge you not to be led in by that seduction.

Lastly, I've taken a long time with you here. In another case I'd apologize for it. In this case I can't. The Prosecutor will get up in less than a few minutes. He's had the opportunity to hear everything I say, he's had the opportunity to make his notes and now to criticize what I've said. I can't come back and talk to you. I won't be here to talk with you again, but I have to rely on you, that you will critically examine what he says as critically as I hope you've examined my arguments. Thank you.

THE COURT: Thank you Mr. Preston. Mr. Talasnik.

MR. TALASNIK: Thank you, Your Honor. May it please the Court, Mr. Davis,

Mr. Preston, ladies and gentlemen, the journey about which I spoke some weeks ago when I began with this case is nearly over and I've got to tell you that I'm just about done in. Three separate times I've been called upon to stand in front of you and talk to you about this case and about this man and I don't know really that I have anything else left to say. I can't know whether there's anything else that you really want to hear from me. The aggravating factors, the two that are cited, those we've talked about. It was only a day and a half ago that I stood before you and reviewed with you what those two aggravating factors were and the evidence in support of those aggravating factors.

One aggravating factor that the purpose for the killing of Gloria Simonelli was to prevent her from testifying against Rick Highlander so that he could avoid trial and punishment for the charge of aggravated assault, we've talked about that. We've talked about the evidence that she was assaulted on the 16th of March, that following the assault she went to her doctor

and she went to the police and signed complaints, that she gave statements to the police, that she then went to get a domestic violence restraining order to protect her until such time as the court case would come up, that she testified in a domestic violence hearing within full view of the defendant about the circumstances of the assault, that she gave a statement to the Prosecutor and that based on that statement Rick Highlander was indicted. You've already heard all about that.

You've already heard how she discussed with her parents and with her friends her resolve to prosecute Rick Highlander to not let him get away with having treated her this way. You've already heard that. You've already heard how the defendant received notice of the charges and was angry, how he got angry when he received notice of the indictment, how he indicated to friends, to casual acquaintances, almost to anyone who would listen to him that he was not going to go to jail, that he was not going to let these charges interfere with his

life and that if nothing else worked he would kill Gloria to prevent her from testifying against him, you've already heard that. How many times do you have to hear evidence that this man articulated himself the reasons why he killed Gloria Simonelli before you believe those reasons? How many times do you have to hear that he told his friend, Robert Brooks, a friend that he had had for ten years, a good enough friend that he asked him to drive him up to North Jersey, how many times do you have to hear that he said in response to some questioning, what did he say other than that he was aware that he had been indicted for the charges of assaulting Gloria? Answer, well, he was under a lot of stress because he was afraid he was going to go to jail from it. Question, did he specifically say that he was afraid of going to jail over that? Answer, oh, yes. He was a lot cooler in his demeanor when he first found out that he was indicted. He was obviously afraid and he didn't want to go to jail. What do you mean? He becom- became more emotional, it bothered him more, the entire issue, I guess

the closer it came to him going to jail for the indictment, the more he became afraid of the consequences. Did he say anything that leads you to be able to tell us today that it seemed that the closer he got to having to go to Court the more afraid he became of the consequences? Answer, yes. Well, he was trying to find a means of either getting out of the situation, the indictment, or leaving the area, such as killing Gloria. He mentioned that as a possibility? Answer, yes.

How many times do you have to hear that he said the same sort of thing to Michael Reed, a fellow who worked for him for seven years, a fellow he felt close enough to to actually live with between the time of the assault and the time of the murder of Gloria Simonelli? Well, he said that there were charges pending and she had information and was going to testify against him and he had tried real hard with attorneys to get her a message and to write her letters and things to get her not to do it. Question, did he tell you what he had tried to do? Answer,

yeah, to try to convince Gloria not to give her evidence up. He said he tried to talk to her through the phone. The phone was changed, unlisted. He tried writing her letters, he got no response. He tried to get people to talk to her, he got attorneys to talk to her. Question, did he tell you why he killed Gloria? Answer, because she was going to turn evidence against him and he would go to prison for fifteen years. How many times do you have to hear that evidence?

How many times do you have to hear that when the defendant was finally arrested after he killed Gloria Simonelli that he told the officer specifically in response to questions, did you kill Gloria because she broke up with you, and his answer, no, I didn't kill her because she broke up with me. I've had plenty of girlfriends that I broke up with. I didn't kill her because she broke up with me. I could have dealt with that. It's just that she might as well have put a gun to my head trying to put me in jail the way she tried.

How many times do you have to hear all of that before you come to the conclusion that beyond any reasonable doubt this defendant's primary and principal reason for taking that young girl's life was because she wanted to put him in jail and he didn't want to go? I'm not going to talk about that aggravating factor anymore. We've done that.

The other aggravating factor, that in the course of killing Gloria Simonelli he created a grave risk of death to another, in this case Patrick Sullivan, we've already talked about that. You've already heard the evidence that when Patrick Sullivan left the bar that night he was side by side with Gloria Simonelli, that they were six inches apart when the two of them walked into the parking lot within full view of the defendant, Richard Highlander, that he got out of the car armed with a weapon which he knew to be capable of lethal use, that was fully loaded and fully operable and approached the two of them standing together, knowing full well that Patrick Sullivan was

in the same zone of danger as Gloria Simonelli, that he raised that gun and fired not just once, but three times in the direction of the two of them knowing full well that once you pull that trigger, you no longer have any control over where that bullet goes or who that bullet is going to hit because you have no way of knowing how Patrick Sullivan is going to react to the sound and the sight of a handgun going off, and as if to demonstrate that Richard Highlander's purpose was to create a grave risk of harm to Patrick Sullivan he even said that he took a shot at Patrick Sullivan because he perceived Sullivan as a threat.

How many times do you have to hear that and see the pictures of the close area where the two of them are standing together and see the led fragments from the bullet that nearly struck Patrick Sullivan and exploded leaving fragments all over the wood behind where Sullivan lay sprawled on the ground? How many times do you have to hear that after this defendant was arrested he told everybody he came in contact with

that he knew Sullivan was there, that he went and committed the murder anyway and that he deliberately purposely took a shot at Sullivan because he perceived Sullivan as a threat? He told Brooksey that over the phone, he told Reed that, he told Stewart that, he told his aunt Judy that and he told the police officers that interviewed him that.

How many times do you have to hear that before you conclude beyond any reasonable doubt that when Richard Highlander got out of the car with that gun and approached those two people that he was bound and determined to kill Gloria Simonelli and he didn't care that Pat Sullivan was there? Indeed he demonstrated a purpose of creating a risk of death to Pat Sullivan by shooting three separate times, three separate bullets that he could never control or take back, one of which was directly aimed at Patrick Sullivan. We don't have to talk about that anymore, that aggravating factor two clearly exists.

Now, what about the mitigating

factors that are urged by the defendant? I want to read them because I have trouble understanding some of the concepts. First mitigating factor urged is that the defendant was suffering from an extreme mental or emotional disturbance at the time of the murder. Essentially the mitigating factor urged is that he, Richard Highlander, was under the influence of the extreme mental or emotional disturbance at the time that he killed Gloria Simonelli and at the time that he took a shot at Patrick Sullivan. In support of that proposition expert testimony has been presented, expert testimony by a psychologist and by the social worker who assisted to permit the doctor to testify that in his professional opinion the defendant was suffering from a mental disease or disturbance known as intermittent explosive disorder.

MR. PRESTON: Judge, may we approach the bench?

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: Mr. Talasnik is

arguing that the intermittent explosive disorder is somehow argued for the first mitigating factor. There is no testimony of that being presented. There is no -- that explosive disorder went to the second mitigating factor, not the first one.

MR. TALASNIK: Your Honor, I think I'm permitted to make fair comment on the evidence. I believe that this mitigating factor includes a disturbance or makes reference to a disturbance if I can get my notes.

THE COURT: It does.

MR. PRESTON: I mean it seems to me the legislature made a distinction and we followed that in the testimony.

MR. TALASNIK: I'm prepared to address the distinction, one, dealing with under the influence of and the other --

THE COURT: I propose -- this addresses a concern that I had, Mr. Preston, that I never expressed because you gave me your recommendation which I followed at the beginning of the penalty phase for describing generically what you wanted me to say about

the defense assertion of what the mitigating factors were. What I would have done, for example, in another context is, I would have outlined for the jury before the matter started the legal concepts involved. I didn't do that here. I haven't done it yet. The jury has yet to hear from me the legal definitions of any of the mitigating factors.

MR. PRESTON: That's why I'm concerned.

THE COURT: I understand. What I propose to do is let you argue as you choose to, Mr. Talasnik, but before you continue I intend to take just a moment in response to what he has asked and just define legally for the jury, not define, but use the words of the two mitigating factors.

MR. PRESTON: Judge, that's the problem because then it makes Mr. -- lends credibility to Mr. Talasnik's argument. I think it just reinforces the error. I think this line of argument should just be dropped and let him proceed.

MR. TALASNIK: Well, it's not capable of being dropped because as Your

Honor indicated, these mitigating factors were suggested to the jury generically in the Court's opening. If Your Honor gives the charge at the end of the case and that charge indicates to the jury that I have misperceived what it is I'm arguing, that's the risk that anybody in closing runs.

THE COURT: I know, but I think here we have something of a higher standard. I'm not going to give any charge if Mr. Preston doesn't want me to.

MR. PRESTON: I have to do something. The best position I think of is if Mr. Talasnik just drops it and goes on to something else and just leave it.

THE COURT: The point is I can't fully agree that the evidence that you offered for the purpose of establishing mitigating factor number two can't be considered --

MR. PRESTON: I never argued it and I never asked the doctor to testify to it. I never presented it in that way.

THE COURT: Maybe I'll say just that and then let Mr. Talasnik argue what he

wants.

MR. PRESTON: That would be acceptable. If you just tell them that was the way it was presented and argued, that's fine.

MR. TALASNIK: I don't know that that's necessary. I think I can infer and make fair comment on the evidence.

THE COURT: I think you can too. I'm not going to restrict you, but I'm going to explain to the jury that the defense offered the testimony for this mitigating factor rather than that one.

MR. TALASNIK: Okay.

(The sidebar conference was concluded).

THE COURT: Ladies and gentlemen, before Mr. Talasnik continues, let me make a brief comment. I have not yet had the opportunity as I will a little later this morning to explain to you the exact legal phraseology and meanings of the several mitigating factors that are submitted to you for your consideration. You're going to hear from me about that in a little bit. You've

heard some of the words being used. What I want to do is simply describe in just a second the legal language of the two separate mitigating factors. I call to your attention that when I do you may decide, listening to this and in your own deliberations, that there is some factual relationship between the questions you're being asked to decide, but they are two different mitigating factors that are offered here by the defendant.

One is the language, the defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution. That's one mitigating factor. A second mitigating factor offered by the defendant is that the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as the result of a mental disease or defect or intoxication, but not to a degree sufficient to constitute a defense to prosecution.

Now, I mention that to you because some of the evidence offered by the

defense was offered with respect to one mitigating factor and some was offered with respect to the other. Specifically the evidence that was offered by the defense on mental disease or defect was offered with respect to the second mitigating factor. You may find that some of that evidence helps you to evaluate whether the first mitigating factor was present too, I don't know, but you should understand that there are those two separate concepts and I will address them separately for you when I explain the law to you in a few minutes. Mr. Talasnik, you may proceed.

MR. TALASNIK: Thank you. You'll recall that when I began to talk about mitigating factors I expressed some personal confusion about these terms and I told you that I was going to read them as best I could from the statute because I have trouble conceptually distinguishing between a mental or emotional disturbance on the one hand and a mental disease on the other hand. My understanding of the evidence that was offered by the defense through the use of the

expert, specifically the psychologist, was that it applied to both mitigating factors and I will continue to address them that way. I suggest to you that what has been urged as constituting the extreme mental or emotional disturbance is the disorder or illness that is named an intermittent explosive disorder. Now, I questioned --

MR. PRESTON: Objection, Judge. The defense never said that in the testimony and never said that in argument and that was the point that I raised with Your Honor.

THE COURT: I understand. Ladies and gentlemen, it will be your responsibility to evaluate the evidence that you have heard and to decide whether that evidence establishes in your minds either of the mitigating factors as I've outlined for you. I will explain when I get my chance exactly what the law means by those mitigating factors. Whether the attorneys feel that the evidence should be used by you with respect to this mitigating factor or that mitigating factor or both or neither is

a matter that you can evaluate. You should understand you are not bound by what the attorneys suggest they think the evidence means to you. That's your decision. They are permitted in each case to suggest to you what they think you should decide, but in the last analysis it is your decision that counts. Mr. Talasnik, you may proceed.

MR. TALASNIK: All right. I asked questions of the doctor and even to some extent of the social worker that assisted him not because I necessarily don't think it's appropriate that you find that this particular disturbance or disease or whatever you want to call it really did exist. I must tell you now that I can understand having substantial difficulty understanding a discipline or science, as psychology is supposed to be, that permits a man to come in here and very calmly and surely express an opinion about the mental condition of Richard Highlander, Sr., a man who he has never met, a man who he has never even talked to and base that decision on what somebody says on a TV screen and what another

person said in their interview of him that doesn't even work for the doctor, and I have substantial problems with a discipline that permits a doctor to come in here --

MR. PRESTON: Objection, he's talking about the discipline as a whole and you've already qualified the doctor as an expert. The jury is entitled to evaluate him on his own standing. The issue here is not whether the discipline is admissible. The discipline has already been determined to be admissible.

THE COURT: Mr. Preston, Mr. Talasnik is arguing to the jury his view of why they should not afford substantial credibility to the testimony. That is permissible argument. The jury will decide what they believe as to the weight or credibility or sufficiency to be attached to the testimony of any witness including the doctor. Mr. Talasnik, you may proceed.

MR. TALASNIK: Thank you, Your Honor. I have difficulty with the value of an opinion when a discipline permits a man to come in here and very assuredly and calmly

diagnose Richard Highlander, Jr. based on reports that were submitted to him by other people, people that he has never interviewed and under circumstances where, as he explained to you, the defendant himself refused to provide information, but let's put all that aside and let's put aside the fact that he's relying on a book that has been replaced by another one that has a different perspective on things, let's put all that aside and assume that this disease or disorder or whatever you call it actually exists.

I suggest to you that the fact of the existence of the disease or disorder does not constitute evidence of the mitigating factor unless the defendant was under the influence of that disease or disorder at the time that he shot Gloria Simonelli, and that's where the problem comes in. Look at the name, intermittent explosive disorder. Recall the way that it was described by the doctor and the examples that he cited from the TV screen from the defendant's mother. He referred to it as

sudden, as violent, as explosive like a bomb going off in response to something that shouldn't trigger in the ordinary person that kind of a response. Sudden, violent, like a bomb going off.

When a bomb goes off it's instantaneous and it's done. The word sudden. It means it happens and it's done. A sudden, explosive act of violence. Ladies and gentlemen, I suggest to you that the defendant would clearly have been under the influence of this disorder defined that way if he had killed Gloria Simonelli on March 16, but that the violent and sudden explosion in response to Gloria's throwing him out of her apartment and out of her life spent itself. It spent itself on the 16th and that what happened between the 16th of March after it spent itself and the 25th of April when he killed her was not under the influence of this disease or disorder. This was a rational, clear minded judgment that it was necessary to kill Gloria Simonelli to prevent her from testifying against him and that the only thing he was under the influence of that

day was his concept of self interest, that it was in his self interest to eliminate the witness against him and prevent having to go to jail.

The doctor indicated that he relied to some extent on the recent history of Richard Highlander in dealing with women. If you look at that recent history you find, I suggest, support for what I am arguing to you today. With respect to the young girl, that he ran into a problem with in Florida at the age of 17, there was a love relationship. There was an attempt, according to the doctor, by her to break off that relationship which led to a violent, sudden explosion that included things like assaults and threats to the girl and her parents and aborted or vain attempts at suicide and then it was over, and then his parents decided to put him in a mental institution, something that he didn't like, and what was it that he said he didn't like about the institution? He didn't like being in the closed ward and so he acted out, not because he was under the influence of this

violent, reactive explosion to the break up of a love affair. He acted out because he didn't like having his life interfered with by that asylum putting him in a closed ward, so he threw tantrums and threatened people and threw furniture, all according to the doctor, and what do they do? They gave him what he wanted, put him in an open ward and he left.

Look at the next young lady with which there was a problem, Tyler Fitzgerald. Again according to the doctor's testimony there was the same situation. There was a love relationship. There was an attempt by Tyler Fitzgerald to withdraw from that relationship which triggered a violent, sudden explosive reaction and an assault on Tyler Fitzgerald that resulted in her leg being cut with a knife, and there was the explosion and it was over, but what followed afterwards was the defendant who was pre-occupied with making sure that she didn't prosecute the charges against him, and there began a two year campaign of harassment and of threats involving the girl and the parents

that ultimately was resolved by having the charges taken care of in municipal court; the violent explosion on one hand that was clearly triggered by this disease or defect or disorder, followed by rational, clear thinking conduct based on his perception of his own self interest in not going to jail.

The third young lady, Phillis Frangione, same exact scenario, love relationship, a break up triggering a violent response where she is assaulted and it's over and then the campaign to make sure that she didn't prosecute, and she didn't, and we get to Gloria Simonelli and we have the same scenario, the same sequence of events. There is a love relationship. There is an attempt by her to break off that relationship triggering a violent, sudden explosive reaction resulting in an assault on the 16th of March and then it's over, and what followed was not under the influence of this emotional disorder or disease. What followed was what the defendant perceived was in his own best interest, was rational, was clear headed, it was a progression of things to do

to avoid jail culminating in the ultimate decision to kill her to avoid jail.

When you look at these four girls, the principal difference between the four of them or among the four of them is that three of them, as best we know, are still alive. Gloria is dead. There has to be a reason.

MR. PRESTON: Objection, Judge. Your Honor gave the jury instruction about the use of this information and I think that the last comment about the comparison of the two endings is going strictly to what Your Honor already instructed them --

THE COURT: I will indicate, ladies and gentlemen, you may remember I think it was yesterday that I told you you may consider the evidence involving the other girls to the extent that you find that it is helpful in evaluating the presence or absence of the mitigating factors. I remind you that any incidents involving the other girls may not be considered in any respect as any type of aggravating factor. You may proceed.

MR. TALASNIK: There has to be

a difference. The only difference is that Gloria Simonelli decided to pursue her criminal charges. I suggest to you that that defeats this mitigating factor, that the mitigating factor deals with violent, explosive and sudden reactions to the termination of a love relationship and that it has spent itself by the 16th of March and that the defendant is not under the influence of that at the time that he kills Gloria Simonelli, that the only thing he's under the influence of is his own decision, rational, clear minded, about what is in his best interest.

Ladies and gentlemen, we don't need a doctor to say what was on the defendant's mind at the time that he killed Gloria. We already know what was on the defendant's mind from the defendant's own mouth as told to you by the witnesses who testified, as told to you by Judy Bryars, as told to you by the officers from the FBI, that what was on the defendant's mind when he killed Gloria Simonelli was the desire to avoid trial and prosecution and possible

punishment and jail for those unrelated charges. That's the first mitigating factor.

The second mitigating factor, that the defendant's capacity to appreciate the wrongfulness of his conduct was significantly impaired by mental disease or intoxication. The mental disease offered again by the doctor was this intermittent explosive disorder, and I suggest to you that even assuming all the shortcomings that I think his opinion may have, let's assume that that mental disease exists. It is not enough again that the disease exists in the defendant's mind, that the disorder or disease, however you want to characterize it, exists. It is only evidence of a mitigating factor if it existed in such a way that the defendant's capacity to appreciate the wrongfulness of his conduct was affected by the existence of that disease.

Unless my recollection is different than yours, I recall the doctor saying in response to a question on cross examination that the existence of this mental

disease that day did not mean that the defendant was unaware of what he was doing, did not mean that he was unaware of the wrongfulness of walking up to two people with a loaded handgun and shooting them.

MR. PRESTON: Judge, that's the test for insanity. We're dealing here with a mitigating factor.

THE COURT: Objection is overruled. The issue in the context to which Mr. Talasnik speaks is the capacity to appreciate the wrongfulness. That's one of the alternate forms of this mitigating factor.

MR. TALASNIK: My recollection of the doctor's testimony was that he said that he was aware of what he was doing and was aware of the wrongfulness of pulling a gun and shooting two people, killing one of them, and I suggest to you that we really don't need a doctor to tell us that he was aware of what he was doing. The defendant told us himself of his awareness of what he was doing and of the wrongfulness of his conduct in the interview that he gave to the

FBI.

"I knew when I did it if I had it to do over again I would unload the fucking pistol on her and the guy too. I meant to do what I fucking did. I knew I was going to kill that mother fucker. If I got to pay the price, I will. I was man enough to pull the trigger. I meant to do what I did. I'm not sorry I did it. I did what I felt I had to."

As clear an indication as there can possibly be from the defendant's own mouth, through the testimony of the officers that spoke with him, that he was fully aware of what he was doing and of the wrongfulness of it. The letter that is referred to by the doctor and which an effort has been made to refer to as showing Rick's true feelings shows that he was aware of the wrongfulness of hurting people because in addition to the line that was referred to by the doctor is the following line. "First off, you don't have to worry about the safety of your daughter." This is in the letter that the defense tells you the defendant wrote

intending to send to the parents. Someone who will write, "first off, you don't have to worry about the safety of your daughter" is not someone who is so under the influence or is so affected by this explosive disorder that he can't appreciate the wrongfulness of jeopardizing the safety of the daughter.

And there's more. I want you to recall the conversation that was had between Rick Highlander at the airport with Lieutenant Welsh and you'll recall Lieutenant Welsh told us that he felt that Rick related to him a little bit better because Rick trusted him, he didn't trust necessarily anybody from the Prosecutor's Office and there was some discussion about Patrick Sullivan and the fact that the shot had been fired at Patrick Sullivan and Rick indicated to Lieutenant Welsh something to the following effect. Well, I guess that proves that there's a God because Patrick Sullivan didn't deserve to die. If that doesn't bespeak awareness of the wrongfulness of shooting somebody, I don't know what does. I suggest what that shows to you --

MR. PRESTON: Judge, that statement was made ten days later and the mitigating factor goes to the time of the offense. The fact that 20 days later he might have been aware of something has nothing to do with the mitigating factor which speaks only of the time of the offense. Mr. Talasnik has made several comments that way now.

THE COURT: Ladies and gentlemen, you will decide whether the evidence of the statement that was made, I believe the testimony was on the 14th of May or 13th of May, you will decide whether and if so to what extent that statement may help you in deciding what the defendant's capacity to appreciate the wrongfulness of his conduct was on April 25. You should keep in mind that the focal time when you have to make that decision is as of April 25. Any evidence that is in the matter before you that may assist you in that regard you may consider. You may proceed.

MR. TALASNIK: I suggest to you that what that statement shows is that the

first five years of Rick's life spent with a loving and nurturing and caring mother were not wasted on him, that he understands the wrongfulness of this kind of conduct, that in retrospect he understood it and he understood it that day and that's what would cause him to say to the officers, that just proves that there's a God. Patrick Sullivan didn't deserve to die.

The third aggravating factor or the third mitigating factor, excuse me, it's hard to pick up, the third mitigating factor essentially comes down to feel sorry for me. Feel sorry for me because I had an abused childhood, feel sorry for me because my mother deserted me at age five and my father used to abuse me physically and perhaps psychologically. Feel sorry for me. I sometimes think that there ought to be a statute of limitations, a limit on how long you can seek to mitigate your own responsibility by blaming your parents. He asks you to feel sorry for him because his mother deserted him 26 years ago and he asks you to feel sorry for him because his father

abused him and his mother 26 years ago and he asks you to be lenient with him because his father psychologically abused him and married somebody who deprived him of love, two people whose residence he left thirteen years ago.

At what point does a 30 year old man have to accept full responsibility for his conduct without seeking sympathy for things that happened more than two decades ago. Feel sorry for me. I am not of good health. I have a heart condition, a heart condition that required surgery and from which, according to the doctor's review of the medical reports, was successful and he healed. Maybe that is a mitigating factor, but I suggest to you that it pales, that the the existence of that congenital heart problem that has since been fixed pales by comparison to the aggravating factor of putting a bullet through the heart of a young lady from which she will never recover just to prevent her from testifying against him.

MR. PRESTON: Objection, Your Honor. Withdrawn.

MR. TALASNIK: I suggest to

you, ladies and gentlemen, that the aggravating factors have been proven and that the evidence of the mitigating factors, if you find that it exists, is far outweighed by the seriousness of these aggravating factors. The legislature has created these two separate and distinct aggravating factors, but I suggest to you that these factors in the abstract and as they apply to this case have some things in common. I suggest that they both disclose a concern with a certain heightened level of arrogance in a defendant, a heightened level of dangerousness and a heightened callous disregard for the lives and the safety of others.

The first aggravating factor, that in the course of committing a killing you knowingly or purposely create a grave risk of death to another. What could be more dangerous or aggravating or callous --

MR. PRESTON: Objection. May we approach, please?

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: The Prosecutor is permitted to argue the existence of aggravating factors, but he is weaving in here other things. He is weaving in the prejudice, the rage, he is weaving in all these emotional qualities of aggravation which are not part of the aggravating factors. He's making a third aggravating factor.

THE COURT: The Prosecutor has the authority if not the responsibility not only to seek to establish to the jury's satisfaction the existence of the aggravating factors, but also to persuade the jury that the aggravating factors, if they exist, are serious enough, whether in balance against the mitigating factors or not, so as to justify the conclusion that the death penalty is the fitting and appropriate penalty. The objection is overruled.

MR. PRESTON: The other objection I have is the Prosecutor is asking the jury to use their passion and prejudice in order to return the death penalty by stirring them up with this rage, by stirring

them up with qualities of arrogance, by speaking of emotional qualities as aggravating factors, by asking the jury to kill him because he is an evil person:

THE COURT: I disagree.

(The sidebar conference was concluded).

THE COURT: You may proceed, Mr. Talasnik.

MR. TALASNIK: Thank you. What could be more arrogant, what could be more dangerous and so clearly disclose a callous disregard for the value of human life than in a man who, once he determines that he's going to kill someone, does so knowing that there is someone else in that zone of danger, someone else for whom he creates a grave risk of death? That's what's aggravating about that aggravating factor and it is manifest in this case with this defendant by a man who decides that he is so intent on killing Gloria Simonelli that he's going to do it with a gun, pulling the trigger three times, fully aware that Patrick Sullivan is in that same zone of danger and, as if to demonstrate

his awareness of the presence of Sullivan, fires a shot at him as well.

As to the second aggravating factor, the killing of a witness against one's self, what could be more arrogant, what could be more dangerous and more disclosing of a contempt for the value of human life that one man would presume to decide that his liberty is worth more than the life of someone else, and it doesn't matter whether you're Richard Highlander or whether you're a mafiosa king, the victim has still been killed to prevent her from exercising her right to seek a redress of her grievance in a court of law.

Nothing cuts closer and deeper to the fabric of this society than the ability of all of us to rely on the integrity of a court system and to know that that court system exists for dispute resolution from everything from a dented car to a punch in the face to a threat to kill, and what could be more arrogant than the determination that I am somehow above all of that? And that exists in this case when Richard Highlander

decides that his desire to avoid going to jail is more important than the life of that young woman, so important that he's willing to kill her to prevent her from testifying, from putting him in jail. It has been mentioned to you both in opening and in closing that you will be assuming a difficult responsibility here, a responsibility the defense doesn't want you to take, a responsibility for deciding not just that there are aggravating factors and that they outweigh mitigating factors, but for getting to the heart of the matter for deciding that death is the fitting and appropriate penalty, and I can understand the timidity, the fear of having to make that judgment. Who am I, you ask, that I should sit in judgment of another? Who am I that I should decide that in this case and for this man death is the fitting and appropriate penalty? I know the fear well. I've got it. I think there's a fancy psychological term for it. It's called imposter syndrome, the fear that the judgment --

MR. PRESTON: Objection. Is he

testifying as an expert now?

THE COURT: Obviously, ladies and gentlemen, Mr. Talasnik, as far as we know, has no psychiatric expertise. You may consider his remarks solely in the nature of argument or persuasion. You may proceed.

MR. TALASNIK: It is the fear that the judgment that you are called upon to make is somehow above you. Ladies and gentlemen, the question shouldn't be, who am I that I should sit in judgment. The question should be, who better than you to sit in judgment; you who have sat through these weeks hearing all of the testimony in this case, you who have a life and who know what it's like to know or to have a little girl and to know the joy that can be brought with just a smile and to know the peace that she can bring to you just by seeing her asleep in her crib at night; who know the awe that you feel when on the verge of womanhood she strikes a pose that leads you to know that she will not much longer be your little girl, and what's it for?

What is it all for if Richard

Highlander can take it upon himself to kill that lady just because she was going to testify against him and maybe subject him to jail? Who better than you to make this judgment; you who have heard all of the evidence; you who have a life and know what it's like to know or to have a little boy and to know the joy that he can bring you when he runs to you at the end of your workday making you forget the troubles that you had; who knows the pride of watching him grow up and go to school and make choices about his friends and about his interests and about his occupation, and what's it for?

What's it all for if Richard Highlander can make the decision that his determination to kill Gloria Simonelli is so strong that he's going to commit that crime, knowing full well that he is creating a grave risk of death for that young man, a risk of death punctuated by going out of his way to even take a shot at that young man, and the answer is that no one is in a better position than you to make that judgment.

Ladies and gentlemen, the State

does not ask that you find death to be the fitting and appropriate punishment out of any sense of revenge or out of any sense of dislike for the defendant. That's not here. The State doesn't ask you to find that death is the fitting and appropriate punishment because we somehow feel 30 years in prison isn't enough or is too trivial. That's not here. That would be a living hell for anyone.

We ask you to find that death is the fitting and appropriate penalty in this case for one reason and one reason only, and that is because Richard Highlander, for the callous way in which he elevated his own self interest over the lives and safety of others, that Richard Lee Highlander for that conduct deserves it. Thank you.

MR. PRESTON: May we approach?

THE COURT: Yes.

(The following takes place at sidebar, outside the hearing of the jury).

MR. PRESTON: Mr. Talasnik has clearly reduced two aggravating factors, as he said, to only one reason, his arrogance.

He's wiped out the aggravating factors and now substituted Richard Highlander's arrogance as the aggravating factor in the case. That went far beyond what he did before. Number two, I object to his comments about this little boy and this little girl, that he -- these jurors are supposed to be making their judgment upon the events that happened in this case and not some emotional appeal of revenge or outrage that Richard Highlander is somehow going to be released tomorrow and kill one of their children, that's improper.

He also mentioned three bullets. Now, if I remember the discussion correctly, there were two bullets that were considered to be the threat. Your Honor made some rulings about that as to which bullets were going to be admitted and which were not. That's all I have to say.

THE COURT: All right. I perceive no impropriety of any kind. I think all of the Prosecutor's remarks were well within the ambit of fair comment.

(The sidebar conference was

concluded).

THE COURT: Ladies and gentlemen, we're going to take a brief recess for about five or ten minutes. I will then present to you my closing instructions. I have arranged with the sheriff to have lunch brought in which should be here hopefully shortly after you recess, but we will turn the matter over to you as soon as I'm done. When lunch comes, you may as you choose continue to discuss through lunch or you can take a few minutes off while eating your lunch as you see fit. In any event we'll be back to you in just a couple of minutes with respect to the closing instructions.

(Jury leaves the courtroom).

THE COURT: Mr. Preston, yesterday you asked and I agreed to incorporate in my charge a couple of things, one of which I now have to ask you about in view of what you said this morning. You had yesterday asked me to delineate five different categories of the third mitigating factor. I told you I wouldn't do that for the verdict sheet and I won't, but I told you

I would in the charge. The language that I came up with yesterday includes a reference that you may not want me to give and you'll tell me.

MR. PRESTON: Can I have a moment to look at the charge?

THE COURT: You don't have it in your language because I just did it last night.

MR. PRESTON: I want to look at the context.

THE COURT: Okay, let me give you the sentence. The defendant has offered evidence relating to the abandonment of the defendant by his mother and others, the psychological and physical abuse in the defendant's childhood, the defendant's physical health history, the age of the defendant at the completion of the required incarceration and any other factor relating to, et cetera, et cetera. The question I have is the reference to age of the defendant at the completion of the required incarceration.

MR. PRESTON: Strike out I

think at the completion of the required incarceration. We did introduce the fact that he was 32 years old. This would be the place to put it. I don't think we can say completion --

THE COURT: I'll say it the way I wrote it, any other way or not at all. What do you choose?

MR. PRESTON: Strike it.

THE COURT: I'll just use age of the defendant.

MR. PRESTON: The other thing, I I would like you to substitute forced separation rather than abandonment in view of the testimony that came in.

THE COURT: Forced separation?

MR. PRESTON: Yes, of the defendant from his mother.

THE COURT: Others or just from his mother?

MR. PRESTON: And others. I think there was the sisters involved too.

THE COURT: Okay, those changes will be made. All right, gentlemen, five minutes please, then we will proceed with the

closing.

(Whereupon a recess is taken).

(Jury returned to the courtroom).

THE COURT: Ladies and gentlemen of the jury, the legislature of New Jersey has given to you as a jury and to each of you individually the responsibility of deciding the fitting and appropriate punishment in this case. After you have been given my final instructions as to the law, you will determine whether the death penalty is the fitting and appropriate punishment or whether the defendant will be sentenced to a term of imprisonment of between 30 years and life with at least 30 years of the term to be served before the defendant can be considered eligible for parole release.

The ultimate burden rests upon the State to convince you beyond a reasonable doubt that the death penalty is the fitting and appropriate punishment for this crime. The defendant does not have the burden of proving either the existence of any mitigating factors or that he should be

permitted to live. In order to reach your decision you will engage in a fact finding and balancing process in accordance with the principles and standards I'm about to outline for you. Quite obviously your determinations are extremely important both to the State and to the defendant. Despite the difficulties that this question may pose, I am confident that you will be equal to the task and that you will fulfill your oaths as jurors in arriving at a determination that is fair and just to everyone.

Let me start by reminding you of some of the instructions that you were given when you were asked to decide whether the State had proven any of the charges against the defendant. Your first task must be to evaluate the evidence, to decide what is believable and credible, to focus on that which you believe is helpful to you in reaching your decision. You should as you did before consider the direct and circumstantial evidence, the demeanor and behavior of any witnesses and your recollection of the testimony that was

presented. You should evaluate the weight of all testimony, including that of any experts, to decide how important or how helpful you consider the testimony to be. You should keep in mind that it is your recollection of the evidence that should govern your deliberations, not the recollection of counsel or even my recollection if I should happen to comment on the evidence.

In reaching your decision as to the appropriate sentence in this matter you may consider any of the evidence that was presented to you in the first part of the case upon which the State or the defendant has chosen to rely, together with the evidence that you have seen and heard here in the penalty phase of the trial that is relevant to the existence or relative weight of any aggravating factor or mitigating factor.

Before I discuss the specific issues relating to the determination of the aggravating factors and mitigating factors, I want to mention a preliminary thought. The defendant chose not to be a witness in this

phase of the trial. It is the constitutional right of a defendant to remain silent. I instruct you that you are not to consider for any purpose or in any manner in arriving at your verdict the fact that the defendant did not testify, nor should that fact enter into your deliberations or discussions in any manner or at any time. The defendant is entitled to have the jury consider all of the evidence that has been presented regardless of whether he testifies as a witness.

In order to assist you in understanding and applying the principles of law that govern the process of your decision, I have again prepared a verdict sheet that we will review together. When I have completed my instructions and you have recessed to deliberate, I will as before send one copy of the verdict sheet into your jury room for the recording of your verdict. As you go through this form with you now, I again ask that you do not get ahead of me in reading the questions and instructions so that you will not miss my explanation of what is written there.

(Verdict form distributed to the jurors).

THE COURT: The first step in this process is the determination of whether the State has proven to you beyond a reasonable doubt the existence of one or both of the aggravating factors that have been alleged. As I have already told you, an aggravating factor is a fact or circumstance that may tend to increase the severity of the punishment which would otherwise be appropriate. The law specifies the particular circumstances that may be considered as aggravating factors and only those factors outlined in the statute may be considered. The fact that you have found the defendant guilty of a purposeful or knowing murder is not in itself an aggravating factor and does not in itself permit you to determine that the death penalty is the fitting and appropriate punishment for the murder, nor may you consider any evidence that the defendant was on some prior occasion convicted of some other crime or crimes. This evidence was offered and may be

considered by you only to establish that he was on probation at the time of the murder insofar as that that fact may bear on his purpose in committing the murder.

The State has asserted two aggravating factors in this case. First, the the State alleges that the defendant in the commission of the murder purposely or knowingly created a grave risk of death to Patrick Sullivan. I have already defined purposely for you and I remind you that it means that the defendant intended that it was his conscious object or purpose to create a grave risk of death to Sullivan. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist. Knowingly means again that a person is aware of the nature of his conduct or he is aware of the attendant circumstances or is aware that there is a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will

cause such a result.

Remember that purpose and knowledge are conditions of the mind which cannot be seen. It is therefore not necessary for the State to prove the existence of such mental states by direct evidence such as a statement by the defendant that he had such purpose or knowledge. Purpose or knowledge like other mental states must ordinarily be discovered from circumstantial evidence; that is by reference to the defendant's conduct, words or actions and all the surrounding circumstances.

The reference to grave risk of death means a substantial liklihood or high probability of great or serious risk of death, not simply a mere possibility. There must be another person within the zone of danger created by the defendant's conduct. In considering whether a grave risk of death to Patrick Sullivan was created by the defendant you may consider the nature of the weapon, the manner in which it was used, Sullivan's location and all the other surrounding facts and circumstances of the

defendant's actions. It is not enough for the State to prove to you beyond a reasonable doubt that the defendant created a grave risk of death to Sullivan during the murder of Gloria Simonelli. The State must prove to you beyond a reasonable doubt that the defendant purposely or knowingly created that risk.

In other words, it is insufficient that there may have been a grave risk of death to Sullivan. It must be shown to you beyond a reasonable doubt that the defendant created that risk purposely or knowingly. You should keep in mind that this is a different question from whether the defendant attempted to murder or to injure Sullivan. Your focus here is on whether or not he purposely or knowingly created a grave risk of death to Sullivan.

I have previously defined for you the meaning of the phrase reasonable doubt. Again a reasonable doubt is not a mere possible or imaginary doubt because anything relating to human affairs or depending in part upon memory or oral

evidence is open to some possible or imaginary doubt. A reasonable doubt is an honest and abiding uncertainty in your minds as to the existence of the aggravating factor after you have given full and impartial consideration to all of the evidence. A reasonable doubt may arise from the evidence itself or from a lack of evidence. It is a doubt that appeals to your reason and judgment, to your common sense and your experience.

We turn then to the first question on the verdict sheet. After considering all of the evidence you are to determine whether you unanimously conclude beyond a reasonable doubt that the State has proven the existence of this aggravating factor. If you unanimously so conclude, you are to check the line marked yes. If anyone or more of you are not satisfied beyond a reasonable doubt about the existence of this aggravating factor as I have defined it for you, you are to check the line marked no.

The process for the next question is the same. Here the State alleges

as an aggravating factor that the murder of Gloria Simonelli was committed for the purpose of escaping trial or punishment for another offense committed by the defendant. In order to find the existence of this aggravating factor you must unanimously be satisfied beyond a reasonable doubt that the defendant, while he was committing the murder, had in mind a purpose to avoid trial or punishment for the prior assault that the defendant allegedly committed upon Gloria Simonelli on March 16, 1988, and that he was committing the murder to accomplish or to help in accomplishing that goal by preventing her from testifying against him regarding those charges. Again the word purpose here has the same meaning. That is that it was the defendant's conscious object or intent to avoid trial or punishment for the prior offense.

Whether or not you decide that the defendant may have had any additional purpose in committing the murder is not controlling. Your focus in this question is whether there was a purpose to avoid trial or

punishment for the prior offense and whether that was the primary purpose for the murder, the principal motivation of the defendant in committing it. You must be satisfied beyond a reasonable doubt that the defendant's concern about being prosecuted on these charges or his concern about the consequences of that prosecution was the most significant reason, the compelling purpose that motivated the defendant in deciding to kill Gloria Simonelli. Again if you are unanimously satisfied beyond a reasonable doubt that the State has proven this aggravating factor, you should check the line on the verdict sheet marked yes. If anyone or more of you are not so satisfied, you should check the line marked no.

Now, please focus on the instructions at the bottom of the first page of the verdict sheet. You will notice that I have told you that if you have answered no to both aggravating factors, your deliberations are completed and you should return your verdict. If you find neither aggravating factor, the defendant will be sentenced by me

to a term of imprisonment within the limits I have described. If on the other hand you have unanimously determined that one or both of the aggravating factors have been established beyond a reasonable doubt, then you must proceed to consider whether there is any evidence of mitigating factors.

This process is somewhat different from the procedure used to determine aggravating factors in some very important ways. A mitigating factor is a fact or circumstance that may tend to decrease the severity of the punishment which would otherwise be appropriate and is a factor that you must consider in determining whether the death penalty is the fitting and appropriate sentence in this case. The law directs you to consider in mitigation any evidence in the trial or in the penalty phase relevant to the defendant's character or record or to the circumstances of the offense, including testimony from any witness called on behalf of the State or the defendant or any exhibit received into evidence in this phase of the trial that

would lead you to believe that justice makes compassion or mercy appropriate in this case. Mitigating factors are offered not to justify or excuse the defendant's conduct, but rather so that you may consider any extenuating facts about the defendant's life, personal traits, background or character or the circumstances surrounding the murder that would justify a sentence other than the death penalty.

The defendant asserts the following facts or circumstances as mitigating factors, and you'll find them on page two. One, the defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution. Two, the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as the result of mental disease or defect or intoxication, but not to a degree sufficient to constitute a defense to prosecution. Three, any other factor which is relevant to the defendant's character or

record or to the circumstances of the offense.

Before I outline the process that is used to determine the existence of mitigating factors, let me explain the meaning of each of these factors. The first mitigating factor deals with the defendant's mental or emotional condition at the time that he committed the murder. This mitigating factor does not require evidence of intoxication which you have rejected as a defense in the first phase of the trial. As you will remember, I explained then that under certain circumstances intoxication may be considered as negating purposeful or knowing conduct. You have already decided that in this case it did not. On the other hand, if the defendant was intoxicated, such evidence may be considered along with any other relevant evidence in determining the presence or absence of this mitigating factor. It is important to remember that this mitigating factor may be present even though the defendant was not intoxicated and had neither a mental disease nor defect.

This mitigating factor is established by evidence showing that the defendant was suffering from an extreme mental or emotional disturbance and that such disturbance influenced him at the time of the murder.

In this regard you are to consider the evidence of the totality of his intellectual and emotional processes at the time he acted. In other words, what was he thinking or feeling at the time? What was the effect of those thoughts and feelings upon him? Then you must consider whether his thoughts or feelings constituted extreme mental or emotional disturbance, and if they did, whether he was under their influence or power when he committed the murder. By disturbance I mean agitation or confusion. In order to find this factor present, however, you must also be satisfied that the mental or emotional disturbance was extreme. That is that it was great in degree.

In short, to find the presence of this mitigating factor you must determine that the defendant was suffering from an extreme mental or emotional disturbance and

that such disturbance influenced him at the time of the murder.

The second mitigating factor is about mental disease or defect or intoxication and the effect of any such condition upon the defendant during the murder. To find this mitigating factor you must be satisfied that the defendant's capacity or ability to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired by reason of mental disease or defect or intoxication. To appreciate means to understand. Significantly impaired means made worse, weakened or deteriorated, not slightly, but rather to an important meaningful or substantial degree. Mental disease or defect means for these purposes a disorder of the mind or emotions that interferes with or affects the ability to perceive, reason or act rationally. Intoxication means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

In evaluating whether there is any evidence of this mitigating factor insofar as mental disease or defect is concerned, you should first decide whether there is evidence of such a condition and if so whether the nature and extent of the mental disease or defect significantly impaired or interfered with the defendant's ability to understand that what he was doing was wrong or with his ability to conduct himself in accordance with the law. You should remember that you are not here dealing with the question of whether the defendant acted purposely or knowingly. You have already decided that he did. Your focus here is on the question of whether there was a mental disease or defect as I have defined it that significantly impaired the defendant's abilities to understand the wrongfulness of his conduct or to conform to the law.

Insofar as this mitigating factor focuses on the issue of intoxication, you will remember that in the first phase of the trial I explained that intoxication was relevant in determining whether the defendant

acted purposely or knowingly. Here, however, the relevance is different because again you have already decided that the defendant did act purposely or knowingly. In deciding whether evidence of this form of the mitigating factor is present, you should determine whether, if the defendant was intoxicated, his intoxication significantly impaired his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

Again as with mental disease or defect, you should first decide whether the defendant was indeed intoxicated and if so whether the nature and extent of the intoxication significantly impaired his abilities to understand that what he was doing was wrong or to conform his conduct to the requirements of the law, even if he was still capable of acting purposely or knowingly as you have found. In analyzing the evidence of mental disease or defect and the evidence of intoxication, you should remember that this mitigating factor may be established by evidence of either condition

alone or by evidence of a combination of the two conditions.

The third mitigating factor is not really a single factor or circumstance, but rather it requires you to consider all the evidence received as it relates to or concerns the defendant's life, his character, his characteristics or record and the totality of the circumstances of the crime. The defendant has offered evidence relating to the forced separation of the defendant from his mother or others, the psychological and physical abuse in the defendant's childhood, the defendant's physical health history, the age of the defendant and any other factor relating to the defendant's character or record or to the circumstances of the crime, all of which together with all other evidence should be considered in determining whether this mitigating factor has been established.

You should consider in mitigation any evidence that has been presented, whether or not your attention has been specifically addressed to that evidence

by the attorneys, that helps you to evaluate this defendant in determining the fitting and appropriate punishment for his crime. You will have to decide what is important to you in reaching your judgment and what is not, what has more weight or significance and what has less, but you must consider everything that has been presented in evaluating the defendant, his background, his past, his family history, his character, his potential and the circumstances of his crime. If any of you considers that there is evidence of this nature that is a mitigating factor in this case, you should identify that evidence in this part of your discussions.

Now, I will review with you the procedure to be used in deciding whether the mitigating factors are present. Stay on page two for the moment. In contrast to the State's burden of proving to you unanimously and beyond a reasonable doubt that there are aggravating factors present, mitigating factors do not have to be proved beyond a reasonable doubt or even by a preponderance or greater weight of the believable

evidence. Neither must your decision as to the existence of a mitigating factor be unanimous or even by a majority vote. It is enough if any of you finds some credible or believable evidence sufficient to support a finding that the mitigating factor exists. You are to deliberate together as to the existence or non-existence of mitigating factors until you are convinced that the view of each juror individually has been firmly established and further discussion would be fruitless. Obviously you should engage in full and complete discussions regarding each factor and to the extent reasonably possible you should attempt to reach an agreement as to whether a particular mitigating factor does or does not exist. Again, however, the law does not require unanimity to determine the existence of a mitigating factor. When each juror has determined for himself or herself whether or not evidence of mitigating factors is present, the verdict sheet is to be filled in by placing the number of jurors who are individually satisfied from all the believable and acceptable evidence that a

mitigating factor or factors exist on the lines marked yes and the number of jurors who are not so satisfied on the lines marked no.

In the second question I have separated the answers and you should record the number of jurors who do and do not find evidence of mental disease or defect or intoxication as a mitigating factor.

With regard to the third question, if any jurors determine that there is evidence of any other factor that is a mitigating factor, it not be specifically identified on the verdict sheet, nor need jurors who find such a factor necessarily agree on the details of such a factor. Simply record the number of jurors who find any such factor on the line marked yes.

Now, please focus on the instructions on the second page of the verdict sheet. You will notice that I have told you that if any of you find evidence of any mitigating factors, you should omit the next question and proceed directly to section three on page fourteen. You would only answer the question on page three if you have

unanimously decided that there is no evidence of any mitigating factors. As you can see on page three of the verdict sheet, if you have unanimously determined beyond a reasonable doubt that one or both aggravating factors exist and none of you finds evidence of any mitigating factors, the ultimate result of this conclusion is that you have unanimously decided beyond a reasonable doubt that the death penalty is the fitting and appropriate punishment in this case.

In order to reach this conclusion you must carefully evaluate the aggravating factors that you have found to exist beyond a reasonable doubt and you must all be convinced beyond a reasonable doubt that the aggravating factors are significant enough and weighty enough to justify the conclusion that the death penalty is the fitting and appropriate penalty in this case. You may decide that the aggravating factor or aggravating factors, while established beyond a reasonable doubt, are not of sufficient gravity or seriousness to justify the conclusion that the death penalty

is the fitting and appropriate punishment for this defendant or you may conclude that the aggravating factor or factors are indeed of sufficient weight so as to justify the imposition of the death penalty. This determination requires each of you to exercise your most careful judgment in evaluating the quality and quantity of the evidence supporting these factors.

In answering the question on page three of the verdict sheet, if you unanimously conclude beyond a reasonable doubt that the death penalty is the fitting and appropriate sentence in this case, you should check the line marked yes and return your verdict, in which case the death penalty will be imposed as the sentence in this case. If after your evaluation all of you agree tnat you are not satisfied beyond a reasonable doubt that the death penalty is the fitting and appropriate punishment for this defendant, you should check the line marked no. This will result in a sentence of imprisonment within the limits I have described.

If a thorough and careful deliberation for a reasonable period of time fails to produce a unanimous agreement and if you are satisfied after thoughtful consideration that continued discussion would not likely result in any unanimous agreement, put a check on the line marked no agreement. This will result in the imposition of a sentence of imprisonment within the limits I have described.

Turning to the instruction at the top of the fourth page of the verdict sheet, you will see that I have told you that if you have unanimously determined that one or both of the aggravating factors are present and if anyone or more of you are satisfied that there is evidence of mitigating factors, then you must all proceed to answer the next question. Do the aggravating factor or factors outweigh the mitigating factor or factors beyond a reasonable doubt? This question requires each of you to weigh and balance the substance and meaning of each of the aggravating and mitigating factors. This

judgment must be made on a qualitative basis, that is by determining the relative qualities of the factors rather than their numbers. You should examine the importance and strength of the various factors in balancing them and focus on the value of each factor. One very important factor, whether it is an aggravating or mitigating factor, can outweigh one or more lesser factors on the other side if you determine that it is that significant.

This weighing and balancing process must be done by each juror individually. Each of you must reach your own personal decision as to the relative weight and importance of each of the aggravating and mitigating factors. Each of you must decide for yourself whether you are satisfied beyond a reasonable doubt that the aggravating factors that you have all determined to exist outweigh in your own mind any mitigating factors that you personally believe have been established. It is not enough that you simply decide the existence of the aggravating and mitigating factors.

This is not a mechanical process. You must evaluate the evidence supporting these factors in making your own individualized judgment regarding the appropriateness of either the death penalty or a term of imprisonment as the fitting and appropriate punishment for this defendant. Your answers depend upon your personal exercise of careful and considered judgment.

Now, let us turn again to the last question on the verdict sheet. As you can see this question asks if each of you agrees that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. If you unanimously so agree, put a check on the first line. This means that you have unanimously determined that the death penalty is the fitting and appropriate punishment in this case and that is the sentence that will be imposed. If all of you agree that you are not satisfied beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors, put a check on the second line. This means that you have unanimously determined that the fitting and

appropriate punishment in this case is a term of imprisonment that I will set between 30 years and life with a parole eligibility prohibition of 30 years and that is the sentence that will be imposed.

If a thorough and careful deliberation for a reasonable period of time fails to produce a unanimous agreement and if you are satisfied after thoughtful consideration that continued discussion would not likely result in any unanimous agreement, put a check on the third line. A failure to reach a unanimous agreement on this question will result in the imposition of a sentence of imprisonment within the limits I have described as I have indicated on the verdict sheet.

Very shortly you will retire to the jury room to begin this most important process. You should consult with one another and deliberate together with a view to reaching an agreement if you can do so without violence to your individual judgment. Each of you must personally decide the appropriate punishment, but you should do

so only after an impartial consideration of all of the evidence with your fellow jurors. In the course of your deliberations you should not hesitate to re-examine your own views and to change your mind if you become convinced that you were wrong. On the other hand you should not surrender your honest belief on the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

You are not partisans. At this point in these proceedings you are the voice and the conscience of the community. You must decide the fitting and appropriate punishment in this case without any bias, passion or prejudice whatsoever. You may, however, if you choose to, consider sympathy in your deliberations, but only insofar as it may relate to an established mitigating factor or factors. Mere sympathy which is unrelated to any mitigating factor may not be considered at all, but you may consider any sympathy generated by the establishment of any mitigating factor if you find it relevant

to your evaluation of the balance of the aggravating and mitigating factors. I need not impress upon you, I know, that it is your duty to render an absolutely fair and impartial verdict. The State and the defendant are each entitled to your fairest consideration, your closest judgment and your impartial decision. If it should become necessary for you to communicate with me during your deliberations or if you collectively have any question to address to me, the sheriff's officers will supply you with paper and pencil for that purpose.

Now, if you'll excuse me one moment, I will need to confer with counsel. Please pass the verdict sheets over to the sheriff's officers.

(The following takes place at sidebar, outside the hearing of the jury).

THE COURT: Mr. Talasnik.

MR. TALASNIK: No objections to the charge.

THE COURT: Mr. Preston.

MR. PRESTON: Several things, Judge, became apparent to me as you read the

charge. One was that I believe the law is that they may consider as mitigation evidence from any phase of the trial, anyplace, and I don't think that that was stated. I think you limited it --

THE COURT: I think I expressly said that. Hold on while I check. I said you should consider in mitigation any evidence that has been presented whether or not your attention has been specifically addressed to that evidence by the attorneys that helps you to evaluate this defendant, et cetera.

MR. PRESTON: But there was only one place that you referred to the phases of the trial and in that place you limited it only to the second phase, this phase, and that's what I think was --

THE COURT: No, I also said --

MR. TALASNIK: Near the beginning.

MR. PRESTON: Okay, the next point was you explained to the jury what they needed to do in order to check off yes for aggravating factor, that they had to be

unanimous beyond a reasonable doubt, but they just finished a procedure where they had to check off no. It was never said that it had to be unanimous.

THE COURT: I said any one or more of you. I said that three times. "If anyone or more of you are not satisfied beyond a reasonable doubt about the existence of this aggravating factor, you are to check the line marked no."

MR. PRESTON: Then I do withdraw the objection. I didn't hear that. Thirdly, in the mitigating factor, number two on the mental disease/defect was withdrawn by the defense in the course of the testimony and never argued to the jury with respect to this and the verdict sheet and so should not appear for their consideration, but also as I recall now from the summations and everything in your charge, the only basis we had in that mitigating factor was conformance conduct to the standards of the law. We never argued about his understanding.

THE COURT: I am satisfied --

MR. PRESTON: I think that

should be withdrawn.

THE COURT: I'm satisfied on both points that the jury can agree in its evaluation of the evidence to conclude a mental defect existed or to conclude that he couldn't conform his conduct as a result, even though it wasn't argued to them and even though --

MR. PRESTON: No, I did argue that. It was the understanding that I didn't argue and that I didn't produce any evidence on.

THE COURT: I think the jury notwithstanding that is free to evaluate the evidence and reach that conclusion even though you didn't argue it and even though you didn't expressly submit any evidence that you thought was intended to convey that. I'm going to charge them both.

MR. PRESTON: Other than that, Judge, I maintain all my previous objections to the verdict sheet and the charge.

(The sidebar conference was concluded).

THE COURT: Miss Garmen, Miss

Allmond, Mrs. Wright and Mr. Huetel, as the alternate jurors you have heard all the evidence and arguments pertaining to the question of the fitting and appropriate penalty in this case and have received the Court's instructions. I will ask you to remain available here in the courthouse to await the jury's verdict and to be prepared to join the deliberations if the need arises.

Mr. DePietro, as the foreman of the jury I will ask you to keep a record of the jury's determinations on the verdict sheet by placing the checks on the appropriate lines or in the case of the mitigating factors recording the number of jurors who do and do not find evidence of mitigating factors. When the jury has completed its deliberations I will ask you to keep the verdict sheet and return to the courtroom. If you advise me at that time that the jury has completed deliberations, I will ask you to present the verdict sheet to me through the sheriff's officer for review, after which I shall return the verdict sheet

to you and ask you to announce the verdict. After the jury verdict has been received I will ask the clerk to poll the jury or call your names individually to determine that you have agreed with the verdict as it will be announced. Please swear in the sheriff's officer.

(Jury attendants sworn).

THE COURT: Ladies and gentlemen, you may retire to deliberate upon your verdict.

(Jury retired to deliberate at 2:10 p.m.)

THE COURT: Gentlemen, the record will reflect that the jury retired at 2:07. Does either of you need for this afternoon a form of the verdict sheet, a copy?

MR. TALASNIK: Yes.

MR. PRESTON: It would be convenient.

THE COURT: I want to discuss the polling question with you. I have written out an appropriate poll question that I think takes care of the problem that I

perceived the other day regarding how we deal with mitigating factors.

First, it's my intention, unless I specifically am asked otherwise, to poll only in the event of a determination of the death sentence. If I am, it is my present intention, which I want to discuss with you and invite your input on, to poll in such a fashion as enables the jury individually to answer simply yes or no to an ultimate question. The question then becomes how do you phrase the question you're going to ask them given the fact that in the case of mitigating factors they need not necessarily be unanimous? I have therefore come to the following phraseology. Tell me what you think.

Ladies and gentlemen, I'm going to ask the clerk to call your names individually. When she does, please answer only yes or no to the following question. Do you personally agree that, first, the aggravating factor or factors, depending on what they return, have been established beyond a reasonable doubt; second, the

aggravating factor or factors outweighs the mitigating factors beyond a reasonable doubt or, in that one, that there are no mitigating factors, and third, the death penalty is the fitting and appropriate sentence in this case.

MR. PRESTON: And also you should answer yes only if your answer was yes to all of those three questions.

THE COURT: Mr. Talasnik.

MR. TALASNIK: I have no problem with that, Your Honor.

THE COURT: Okay, I'll make an appropriate referral to that at the end. Okay, we'll be in recess. Please remain at hand. It's now about ten after twelve. I think at least until one, you are free to go to lunch. I will remain here. The evidence in the matter should be reviewed. I mentioned on the record yesterday the specific items. I believe the clerk has them all.

MR. PRESTON: Is Mr. Highlander here, Judge?

(Discussion off the record).

(Whereupon a recess is taken).

THE COURT: Counsel, the record will reflect the following. At about five after three the sheriff's officer advised me that the jury had requested another verdict sheet as apparently according to the foreman the first one had gotten messed up or something of that nature. I sent a separate verdict sheet in with instructions that the foreman was to destroy and retain the papers that comprised the original sheet and he was to keep that in a separate envelope, for which it is my plan to have him take that and throw it away, but I sent a separate sheet in with a separate envelope for the verdict. I was advised by the sheriff at 3:34 that the jury had completed deliberations. Please have the defendant join us.

(Defendant entered the courtroom).

THE COURT: Please ask the jury to join us and have the alternates placed in the front row. I would caution the members of the audience that the return of the verdict is to be met with no comment or

display of any kind.

Mr. Huetel and ladies, the jury has completed deliberations. You may have a seat right there for the moment.

(Jury returned with a verdict at 3:45 p.m.)

THE COURT: Mr. DePietro, the sheriff has advised me that the jury has completed its deliberations, is that correct?

MR. DE PIETRO: Yes, Your Honor.

THE COURT: Would you be good enough to return the verdict sheet to me for the moment, please. Thank you. All right, thank you.

Mr. DePietro, I will ask you if you will stand and indicate the answers that the jury has reached to the questions as I will read them. Aggravating factors, question one, do you unanimously agree that beyond a reasonable doubt the defendant purposely or knowingly created a grave risk of death to Patrick Sullivan?

MR. DE PIETRO: Yes, Your

Honor.

THE COURT: Number two, do you unanimously agree that beyond a reasonable doubt the murder was committed for the purpose of escaping trial or punishment for another offense committed by the defendant?

MR. DE PIETRO: Yes, Your Honor.

THE COURT: Page two, mitigating factors. Question one, and here you will give the numbers of jurors who make the appropriate findings. Question one, the defendant was under the influence of extreme mental or emotional disturbance; number of jurors yes.

MR. DE PIETRO: One.

THE COURT: Number of jurors no.

MR. DE PIETRO: Eleven.

THE COURT: Question number two, the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired first as a result of mental disease or defect. Number yes?

MR. DE PIETRO: Two.

THE COURT: Number no?

MR. DE PIETRO: Ten.

THE COURT: As to intoxication, number yes?

MR. DE PIETRO: Two.

THE COURT: Number no?

MR. DE PIETRO: Ten.

THE COURT: As to question three, any other factor which is relevant to the defendant's character or record or to the circumstances of the offense. Number of jurors yes?

MR. DE PIETRO: Two.

THE COURT: Number no.

MR. DE PIETRO: Ten.

THE COURT: On page three, the question is not answered, is that correct?

MR. DE PIETRO: That is correct.

THE COURT: Yes, page four, read the answer that the jury has given to the question, do the aggravating factor or factors outweigh the mitigating factor or factors beyond a reasonable doubt?

MR. DE PIETRO: We are unable to reach unanimous agreement on this question.

THE COURT: Thank you, sir, you may be seated. Would you be good enough to hand the original verdict sheet to me? Gentlemen, anything else that either of you would have me do or say before I address the jury?

MR. TALASNIK: Nothing, thank you, Your Honor.

MR. PRESTON: Nothing, thank you.

THE COURT: Ladies and gentlemen of the jury, and I specifically include in my remarks the alternate members of the jury who have served in part by patient availability, with the return of your verdict you have completed the service for which you were called. For a relatively short period of time you have been an essential part of the judicial branch of our government, a government whose form we believe to be superior to any other other on the face of the earth. One of the reasons

for this belief is our ability to turn to the community through the jury system and to impose on the time, efforts and abilities of people such as yourselves to resolve these kind of cases. Without that ability our form of government would not function, so I hope that in spite of the difficulties and problems in this case you have achieved a real measure of personal satisfaction in having served the community.

On behalf of the parties, the attorneys and the Court itself, I express my thanks and appreciation to you for your work. The key to your ability to function as a jury, as I know you now realize, has been the ability of each one of you to discuss freely and openly with each other your views, thoughts and opinions concerning this case during your deliberations. That freedom of discussion was fostered by the understanding which each of you shares that what is said and done in a jury room is an exchange of confidence among equals with reliance on the fact that the confidentiality will never be broken. That sense of mutual trust and

reliance you shared was essential to the success of the deliberation process. Were only one of you to discuss with outsiders those shared confidences, those open expressions of individual views, you would be guilty of breaking the faith and trust reposed in you by the others. If jurors were to turn into public gossips, the jury system as we know it would cease to function effectively.

You should be aware that we have a rule of court which provides that none of the attorneys or litigants connected with this case nor anyone acting for them may talk to you about anything touching upon your service or decision in this matter without first seeking an order of this Court permitting them to do so. Such a contact is not likely to occur, but if it does happen you should report that fact to me immediately.

You are aware I am sure that this case has attracted some attention and coverage from the media, radio, television and newspapers. You may be questioned by

reporters or other media representatives. You should understand that there is a constitutional right for the media to seek information from jurors or others. There is no way to prevent this type of questioning, nor should there be, but you yourselves have the ability to control the situation. You have the right to be private citizens. For a short time you have fulfilled an important public function, but you are now free to to return to your private lives and you are entitled to be free from harrassing questions of media representatives or anyone else.

The public, the press and the judicial process do not always share the exact same goals. Our job in this case, yours and mine, has been to see that justice was done. This courtroom is open to the public. The jury room, however, is not and no one can force open that door. Therefore if you do not wish to be questioned, say no when asked and stick to it. Reporters are known to be persistent. If you do not wish to speak, do not speak at all. Once you start to answer some questions, it can be

very difficult to stop. Make your position clear, emphatic and final. If you feel you are being badgered or harassed after clearly indicating your desire to be left alone, call me.

Should you decide to discuss the case with anyone, media or otherwise, please keep in mind what I have told you. All jurors have a right to expect that their discussions with their fellow jurors during deliberations will be kept confidential. Therefore if you do choose to discuss the case under the circumstances, you should not make any statement that you would not be prepared and willing to repeat if necessary under oath in open court and in the presence of your fellow jurors.

You are now excused. You leave with our thanks and with the reward that comes from your own satisfaction in having served our community and our system of justice. Thank you very much.

(Jury leaves the courtroom together with the alternates).

THE COURT: With respect to the

verdict of the jury, judgment of course has already been entered on this count. Sentence will be imposed on this count together with the remaining counts for which judgment has already been entered on Friday, July 21, in this Court at nine o'clock. I have already ordered the preparation of a pre-sentence investigation report and will, Mr. Highlander, send somebody to see you from my staff within the next few days to get some information in connection with the preparation of that report.

Gentlemen, is there anything further that needs my attention with respect to the proceedings in this matter?

MR. TALASNIK: Nothing, thank you, Your Honor.

MR. PRESTON: Nothing, Judge.

THE COURT: The matter is in recess.

(Adjourn)

C E R T I F I C A T I O N

I, GERALD W. ABARNO, A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER OF THE STATE OF NEW JERSEY, DO HEREBY CERTIFY THAT THE FOREGOING MATTER IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN AT THE TIME AND PLACE HEREINBEFORE SET FORTH.

GERALD W. ABARNO, CSR
OFFICIAL COURT REPORTER
LICENSE NO. XI00326

DATE: 10/10/89

Jukes Intake.

A-59-8974

P.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
ATLANTIC COUNTY
INDICTMENTS NO. 88-06
87-02-0233, 87-02-03[illegible]
86-03-0590

RECD
APPELLATE DIVISION
NOV 11 1990
CLERK

3-C

STATE OF NEW JERSEY,	:	STENOGRAPHIC
Plaintiff,	:	TRANSCRIPT
vs.	:	OF
RICHARD HIGHLANDER,	:	SENTENCE
Defendant.	:	

MAYS LANDING, NEW JERSEY
JULY 21, 1989

B E F O R E: HONORABLE STEVEN P. PERSKIE, J.S.C.

TRANSCRIPT ORDERED BY:

JAMES JUKES, ESQUIRE
Assistant Deputy Public Defender

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

MURRAY TALASNIK, ESQUIRE
Assistant Prosecutor
On behalf of the Plaintiff

MICHAEL PRESTON, ESQUIRE
AND NATHAN DAVIS, ESQUIRE
On behalf of the Defendant

LUCILLE A. KELLY, CSR, RPR
Certified Shorthand Reporter
License No. XI01052

THE COURT: This is before me for disposition of a number of matters, sentencing with respect to Indictment 88-06-1443 on the jury verdict. I also have two other indictments on the Court's calendar, Court's list, regarding Mr. Highlander, those being 88-05-1343 and 89-02-0453.

In addition, I was given earlier this week, and gave to counsel, defense counsel, a violation of probation complaint with respect to three matters. It appears from my review that in July of 1986 Mr. Highlander was placed originally on probation on an Indictment 86-03-0590. In July of 1987 that probationary term was revoked, and sentence on that Indictment 86-03-0590 was suspended for a period of five years.

At the same time in connection with two other indictments, 87-02-0233 and 87-02-0325, Mr. Highlander was placed on probation by Judge Greenberg in July of '87. The probation department has brought violations of those two probations before me for failure to remain law abiding which I perceive, Mr. Preston, the conviction on the now indictment constitutes,

as a matter of law, and, accordingly, determine that the probations imposed on Indictments 87-02-0233 and 87-02-0325 in July of 1987 have indeed been violated by operation of law, given the conviction on Indictment 88-06-1443, as a consequence of which I will revoke the probations that were imposed in July of 1987 on those two indictments.

That, I perceive, requires me then to resentence on the violations of probation on those two indictments, and to sentence on the suspended sentence that was afforded in July of '87 on the original indictment.

I have received in connection with the proceedings this morning the violation of probation complaint to which I have made reference. I have received original Pre-sentence Reports that were prepared in connection with the Indictment 590 in July of '86 submitted in front of Judge Greenberg and, again, in July of '87 submitted to Judge Greenberg. I have reviewed as well the Judge's statements of reasons, and aggravating and mitigating factors for all of those matters, copies of which I have afforded to

Mr. Preston.

In addition, I have received the Pre-sentence Report that has been submitted to me under date of -- it's not dated. It was prepared and submitted this week for today in connection with Indictment 1443. In that respect, I observe that on the face sheet there are a couple of misstatements with respect to the degree of the offenses that are involved. Specifically, with respect to Count 2, it is alleged there it's a third-degree offense. It is in my view a second-degree offense. Count 3 is not identified, but it is, in my view, a fourth-degree offense. Count 7 is identified there as a fourth-degree offense and it is, in my view, a third-degree offense.

In addition to the content of the Pre-sentence Report as it appears, appended to the report for my consideration, and which I have considered, are a number of attachments, including some discovery and statements attendant to some of the earlier incidents, specifically the 1986 incident involving Tyler Fitzgerald; documents from Coral Ridge

Psychiatric Hospital of 1975; Dr. Dire's report of June 6th which tracks the testimony that he gave in this matter, and his curriculum vitae; transcripts of -- not transcripts, summaries of interviews contained undertaken by Tessie Alfonso with Lucy Webb which, to a certain extent, and to a certain extent not, were included within the testimony that was offered.

Also, a summary of an interview between Tessie Alfonso and Loni Savage, and another with the defendant's father, Richard Highlander, Senior. Also, a supplemental report by Dr. Dire of June 17 of this year, a copy of some of the language from the DSM, the relevant parts.

I have also received and considered two letters: one dated July 12, 1989, from Mr. and Mrs. John Simonelli, that would be Senior, and a letter of July 12 from John Simonelli, Junior.

Mr. Preston, have you had the opportunity to review all of that material with Mr. Highlander?

MR. PRESTON: Judge, I have not received

any letter from John Simonelli, Junior. I received a letter from Mr. and Mrs. Simonelli, but I have not received anything from Mr. Simonelli.

THE COURT: You may examine the letter from Mr. Simonelli, Junior. I will need it back.

MR. PRESTON: Thank you, Judge.

THE COURT: Have you reviewed everything else with Mr. Highlander?

MR. PRESTON: I have.

THE COURT: Before I hear from Mr. Preston and Mr. Talasnik and, of course, Mr. Highlander and anybody else who properly should be heard, let me address preliminarily issues representing the five counts of the indictment before me that are available for sentencing.

Specifically, what I want to hear preliminarily, I guess, Mr. Talasnik, first, from you is what position the State has, if any, with respect to the question of a merger and/or concurrent or consecutive sentences regarding the first, second, third, sixth and seventh counts of the indictment.

I would also like to hear from you on a preliminary basis as to what your position is in connection with the two unrelated pending indictments that are before the Court.

MR. TALASNIK: Thank you, your Honor. The two indictments that are left pending as against Mr. Highlander are both theft offenses. One indictment, specifically 88-05-1343, charges one count of bad checks. The other indictment, 89-02-0453 is in a number of counts specifically a theft, but they all address offenses characterized as theft: misapplication of entrusted funds, failure to file tax returns and failure to turn over taxes collected. These matters are unrelated to the homicide indictment and are available for disposition.

I have reviewed these matters with the Prosecutor, and we have determined that it is no longer appropriate to pursue prosecution of these matters. By virtue of the jury's verdict on the murder indictment, the defendant must by operation of law be sentenced at least to a term in the New Jersey State Prison of 30 years with no eligibility

for parole for that 30-year period; and because of the additional counts of the indictment and the violation of probation that exists, there is the specter of even additional sentence beyond that.

For those reasons, he has authorized me to prepare motions and orders for dismissal as to those two indictments, and I would present them to the Court.

THE COURT: Mr. Preston, do you desire to be heard?

MR. PRESTON: No, Judge.

THE COURT: The State having applied for the reasons just indicated and having submitted orders consistant with those applications, I will dismiss at this time indictments 88-05-1343 and 89-02-0453 as against this defendant.

Mr. Talasnik, on the question of merger and/or concurrent and consecutive sentences regarding the five counts of the indictment that are before me today?

MR. TALASNIK: Your Honor, the State concedes that Count 2 of the indictment, or perceives that with respect to Count 2 of the

indictment, possession of a weapon for a specific unlawful purpose, that that would merge, as a matter of law, with Count 1, which is the count charging murder.

The count in the indictment specifically designates the specific unlawful purpose for which the weapon was possessed. It was not charged, and the jury was not given an option, to find any unrelated unlawful purpose, and since the specific unlawful purpose for which the weapon was secured and possessed was effectuated through the murder of Gloria Simonelli, I believe Count 2 would merge by operation of law.

Count 2 merging would also, in the State's view, cause Count 7 to merge, the unlawful possession of the weapon, specifically by having a weapon without a permit. The evidence that was presented to the jury, and which the jury incorporated within their verdict or accepted for purposes of their verdict, was that the weapon was secured, that it was secured for a limited purpose, specifically for the murder of Gloria Simonelli; and that after that specific

purpose was accomplished, the weapon was disposed of.

Therefore, Count 7, the State concedes, would also merge with Count 1. The State perceives, however, that Count 6 is a separate and distinct crime and does not merge. There is a separate victim involved, a separate act of violence, specifically in pointing the weapon at or in the direction of Patrick Sullivan, and attempting to cause bodily injury to Patrick Sullivan through the use of that weapon; and, so, Count 6 should be available for disposition.

The State also perceives that Count 3 charging criminal contempt does not merge by operation of law. The State feels that Count 3 charges a separate and distinct offense; that the elements of one are not necessarily lesser included within the offense of murder; that there is a different victim with respect to Count 3 than there is with respect to Count 1, and that there is an articulable separate legislative purpose for Count 3 as opposed to Count 1.

With respect to each of those three

issues, first the lesser included offense concept, the State perceives that the criminal contempt would have been complete at the point that Mr. Highlander pulled the weapon and pointed it at or in the direction of Miss Simonelli. There was more than that, and that went beyond. Therefore, the bare elements of the offense that were necessary, specifically the existence of a Domestic Violence Restraining Order and the commission of a criminal act in violation of that restraining order, were met.

Additionally, the elements of the criminal contempt would have been complete, if in addition to pulling the gun and pointing it at Miss Simonelli, which would constitute a fourth-degree aggravated assault, a third-degree aggravated assault were committed, which in this case there was: The shooting at or in the direction of Miss Simonelli, a bullet that pierced her jacket at both the arm and the shoulder which did not strike her body, that that would constitute an attempt to cause bodily injury with the weapon, a third-degree aggravated assault, and

at that point the crime of criminal contempt was completed.

In this case there was more. There was another shot fired into Miss Simonelli's body causing her death. There are, therefore, separate and distinct elements that do not necessarily constitute lesser included offenses.

There is, in addition, an additional element for the criminal contempt, and that is that the criminal act committed has to be in violation of an existing Domestic Violence Restraining Order. There was evidence of that in this case, and that particular element is not a part of the crime of murder of which the defendant has committed.

So I suggest that the elements of the two offenses are not necessarily included or overlapping; and, so, that crime should survive. I also suggest that there are different victims in those two charges. The victim, of course, of the homicide count is a woman, a Gloria Simonelli. The victim of the criminal contempt is the State of New Jersey with the integrity of the Family Court.

There was a Court Order in effect which was violated purposefully or knowingly through the conduct of Mr. Highlander. If it were not so that there is a separate victim here, namely, the court system and the integrity of the court system in the State of New Jersey, there would be to need for 2C:29-9(b) to exist. There would be no need to have a separate crime charging criminal contempt where the act of contempt constitutes an independently and separately prosecutable crime, vis-a-vis the named victim in this case, Gloria Simonelli.

So I suggest since there are separate and distinct victims, that the two crimes are available for sentencing separately and they do not merge.

And, finally, I also suggest with respect to that count that there are different legislative purposes involved with respect to the crime of murder. Of course, the legislative purpose is to protect the lives of the citizens of the State of New Jersey.

With respect to the crime of criminal contempt, as specifically enumerated in

2C:29-9(b), the legislative purpose is to protect the integrity of the judicial process in such a way that when a victim seeks the protection of the Court through securing a protective order by way of a Domestic Violence Restraining Order, that that order has an independently recognized existence, and that the integrity of the court process and the willingness of people to submit to that court process requires that the order have a separate and distinct identity.

It is similar to the position taken with respect to there being a separate victim in that it focuses on a separate legislative purpose in protecting the integrity of the court system in the form of Domestic Violence Restraining Orders.

I suggest, therefore, there are available for the Court to sentence three counts of the indictment, Count 1, Count 3 and Count 6.

With respect to the issue of the concurrent versus consecutive sentencing, the easier issue deals with Count 1 and Count 6. In that case, and focusing upon the articulated principles of State v. Yarbough

recorded at 100 N.J. beginning at 627, those two crimes are particularly appropriate for consecutive sentencing. There can be no free crimes in a system for which the punishment shall fit the crime.

That is the principal focus of the Court in State v. Yarbough, and in this case there are two separate and distinct crimes committed against two separate and distinct individuals. There was the murder of Gloria Simonelli. There was the attempt to cause bodily injury with a weapon of Patrick Sullivan. Either crime could have been committed without reference to the other.

Inasmuch as these are separate crimes with separate objectives committed against separate victims and each constituting a separate act of violence, I suggest that those two counts are particularly appropriate for consecutive sentencing.

The closer issue on concurrent versus consecutive sentencing comes with respect to Count 1 and Count 3. It is clear that the essence of the criminal contempt is, first, the assault and, thereafter, the murder that

was committed against Gloria Simonelli.

However, I suggest to the Court that there is an appropriate measure of separateness to commend these two counts for consecutive sentencing, focusing primarily upon the same considerations that prevent merger. That is to say that there are separate victims involved, and there are separate and distinct legislative purposes involved in those two counts.

I suggest to the Court, therefore, that there are three counts available for sentencing out of this indictment, and that all three are susceptible and appropriate for consecutive sentencing. There is, of course, also the violation of probation, which I suggest is further appropriate for consecutive sentencing.

THE COURT: I don't need to hear from you on that at this time.

MR. TALASNIK: Very well.

THE COURT: Mr. Preston.

MR. PRESTON: Thank you, Judge. First, with regard to the merger of counts in the indictment, I note initially that while we

begin with the Blockberger test, New Jersey has proceeded with a more flexible test, State v. Best, and with respect to Count 1 and Count 2, I think that State v. Truglia and State v. Porter, Truglia at 97 N.J. 513, and Porter at 210 N.J. Super 383, App. Div. (1986), require the merger; and I agree with the Prosecutor that the possession of a weapon for unlawful purpose must merge with the murder.

As to Count 7, I also agree with the Prosecutor. As to the separateness of Count 3, I do. I do agree with his conclusion. It does not merge. As to concurrence of the sentence, I think that the test is correctly cited as Yarbough, that we have consecutive sentences with respect to Count 1 and Count 6.

However, I do not think that the rationale as to a consecutive sentence for Count 3 holds water. The test that the Prosecutor proposes, if you don't merge, then the same elements which prohibit merger also prohibit concurrent sentence, and I don't think that Yarbough says that at all.

I think that with the Yarbough's test we are talking about a single or a fractionalized

transaction. And the transaction was so integral timewise and purposewise, intentwise that I think there is no fractionalization.

THE COURT: All right. Thank you. I find myself, interesting enough, in disagreement with both of you. I am not satisfied that as a matter of law the second count merges with the first. I understand the flexibility test, but also the flexibility flux in the State of New Jersey on the question of mergers.

I recently had an occasion in a different context to explore that, and that opinion is before the Appellate Division at this point. I think the elements of the weapons offense and the elements of the murder are sufficiently distinct, although in this case, and I'll indicate factually, there is a substantial distinction, but the elements are sufficiently distinct so as to preclude merger as a matter of law.

I think that what is involved in the weapons offense is the weapon itself, although here, of course, to be sure, the weapon was the instrumentality of the homicide. I am not

satisfied that the law requires a merger.

On the other hand, I am satisfied under the Armour standard that on the facts of this case, although I believe separate convictions are mandated, I believe the sentence imposed must be concurrent. I am satisfied that Yarbough requires that result, given the nature of the facts and given that the weapon which was the principal focus of the second count was in fact the instrumentality of the murder, and it was possessed for that purpose.

The same conclusion essentially, in my view, relates to the seventh count, which is the other weapons offense. There is case law specifically precluding a merger of the seventh count with the second, and I don't think that they merge, as a matter of law, nor does the seventh merge with the first.

On the other hand, for the same reason, I'm satisfied that Yarbough requires any sentence imposed on the seventh count likewise be imposed concurrently with the sentences of the first and second counts, as the possession of the weapon without the permit was both the same time and circumstances and essentially

for the same purpose as the offense alleged in the second count and as the homicide in the first.

Therefore, I am satisfied that I should not merge Counts 1, 2 and 7, but that sentences imposed with respect to all of those counts should be imposed concurrent to each other.

With respect to the sixth count, I am satisfied that, as both parties indicate, the offense does not merge. I am satisfied that it was, furthermore, under Yarbough sufficiently distinct so as to justify and, in my view, require the imposition of a consecutive sentence. I am satisfied that under the Yarbough standard it was indeed a separate act of violence, a different victim. The motivations, the rationale, explicitly were different.

Although the assault was contemporaneous, that is sequential, I am satisfied it was a different thought process, a different purpose, and that the identity -- the separateness of the identities of the victims and the purpose of the crimes require me to

preclude the free crime concept and require consecutive sentences.

Regarding the third count, the fourth-degree contempt, I am, again, in agreement with both parties that the offense does not merge, and the elements are separate and distinct.

I, however, am satisfied that on the facts of this case a concurrent sentence, again, is called for rather than a consecutive. I perceive the fact that the assault occurred in violation of the order to be an aggravating factor of the assault and may be considered as such, but I consider that the act of violation of the order here was the contact and, to be sure, the violent contact with Gloria Simonelli.

While it is true that in the third count the victim is the State and the integrity of the court process, here I am satisfied on these facts that the essence of the violation of the order was less to express any contempt for the Court than it was to fulfill the defendant's purpose in terms of his assault on Gloria Simonelli.

Accordingly, while I consider it an aggravating factor in that assault, in the homicide, I am satisfied that a concurrent sentence should be imposed.

Accordingly, with respect to the several charges of the indictment, I intend to impose sentences on all of them separately, but I intend to impose concurrent sentences on the first, second, third, and seventh counts, and a consecutive sentence on the sixth count.

With that background, Mr. Preston, I will invite you to address your attention to whatever you choose to present by way of sentence regarding either the charges in the indictment, the violations of probation or the imposition of sentence on Indictment 590.

MR. PRESTON: Including the violation of probation, Judge, you said?

THE COURT: Yes.

MR. PRESTON: May I have a moment, Judge?

THE COURT: You may.

MR. PRESTON: Judge, first, with respect to the Pre-sentence Report -- I have some matters to bring to the Court's attention. There is the third from the last page of the

report immediately prior to the letter --

THE COURT: I have 31 numbered papers and then attachments.

MR. PRESTON: That would be probably page 31, then. Well, it's a case discussion of John H. Davies, manager of the World Tower Hotel. It is the -- in my copy of the report, it is the page immediately preceding the letter from the parents of Miss Simonelli.

THE COURT: Okay. I have it. That's from an old Pre-sentence Report from the 1986 incident.

MR. PRESTON: Right. Yes, Judge, that's correct. On that report, the defendant disputes the facts that are set forth in that report. None of that was in any way presented to the Court. Mr. Davies never came forth. None of this came forth as factual matters for the Court's consideration. All of these facts are disputed by the defendant.

All right. With regard to the Coral Ridge report that was appended, the defendant has, obviously, disputed matters in that report as indicated by the Pre-sentence Report and --

THE COURT: I have his assertions as they are contained in the interview.

MR. PRESTON: And he wishes to make known that those matters are disputed. Additionally -- there are additionally several places within the Pre-sentence Report and the materials that the Court has, a number of allegations made by Tyler Fitzgerald, and the defendant disputes those allegations as to that specific person also, and wishes the Court not to consider them.

On the violation of probation complaint, the Court has made disposition with respect to charge one. The underlying basis for charges two and three have been dismissed. Are the --

THE COURT: I'm not concerned about the failures to pay, if that's what you are getting at.

MR. PRESTON: The comments that were made within the comment section on the report, I think that the Court can see that those comments are inappropriate, given the rulings under the Supreme Court Bayless and Molino, and would ask the Court to disregard them.

THE COURT: The conclusions may or may

not be. I will certainly agree that I am bound by the applicable principles of law, rather than the opinion of the probation officer, but the question of what the appropriate sentence may be and whether or not the opinion of the probation officer is consistant with an appropriate sentence is still for me to determine.

MR. PRESTON: I indicate that the probation officer reached his conclusions after setting forth a number of reasons which were inappropriate. Therefore, insofar as the conclusion is based on inappropriate reasoning, we ask the Court to disregard it.

THE COURT: It is clear that the operative rules that govern the question of the sentence are set by the Court and not by the probation department.

MR. PRESTON: Judge, as to the sentence itself, there were a number of interesting legal issues which an attorney could become enthralled in in this case in terms of merger, in terms of concurrency of sentence, in terms of the violation of probation, State v. Bayless, State v. Yarbough; and they, I

suggest, for the most part eventually evaporated. They were an intellectual exercise, given the nature of the sentence which the Court had at its disposal.

I would like to set forth, briefly, some of the thoughts and the positions of defense that went into those. I think it's necessary for the record, and I think it's necessary to state where exactly we believe the law to lie, so I'll attempt to do that very briefly.

I think the Court has already considered what we had to say about the merger and the concurrency of sentence on the homicide indictment.

With respect to the violation of probation, I suggest to the Court that given the reasoning in Bayless and Molino, and given the character of the sentence, the sentencing procedural character that the Court now faces in 86-03-0590, the suspended sentence, that the principles of Bayless and Molino equally apply. Basically, they do no more than set forth and reaffirm the standards of the code which are supposed to be imposed on any sentence and which, unfortunately, over a

period of years has been neglected in sentencing with respect to violation of probation.

I don't think the Supreme Court made any new law with Bayless and Molino. I think that it was what we were supposed to be doing the whole time and weren't doing; and insofar as that's true, I think that Bayless and Molino govern and apply to suspended sentence also. It might be a different story if the suspended sentence was in the nature of that a specific sentence was imposed and imposition was suspended.

THE COURT: Mr. Preston, I agree with you.

MR. PRESTON: I look, therefore, to Bayless and Molino with respect to all of the indictments for which he is to be sentenced on the violation of probation, and I note the following based on what I have just said, the following criteria, and the specific remarks of the Court on page 178 Bayless: "We anticipate that it will be a rare case in which the balance of the original aggravating factors" -- "original aggravating factors and

the surviving mitigating factors weigh in favor of a term of imprisonment greater than the presumptive sentence or of a period of parole ineligibility."

I can't say that I have had the opportunity to argue that many cases under the Bayless standard in recent months, but I can't say from my experience that what I have just said has applied to those cases. I can't say that it has been rare that the aggravating -- that the extended term, that the minimum parole eligibility, has been imposed or the maximum of the minimum parole eligibility has been imposed. And, therefore, I come to this case with some hesitation as to how to proceed.

I would urge, again, that there -- even though the basis for the violation was a homicide case, that does not make it a rare instance, because Bayless itself says you can not use what has happened since the offense as an aggravating circumstance to tip that balance. It can only lighten or lessen mitigating circumstances. And when I go through the mitigating circumstances as they

are set forth in the Judgments of Conviction, I don't see where that heavy balance can be set forth.

The other thing which Bayless delves into, and I think is certainly not unique to Bayless, is there is no double counting of these aggravating factors, that the Court use certain reasons for giving a maximum sentence, and can't use those reasons again to give a consecutive sentence, and it can't use those reasons a third time then to give minimum parole ineligibility. You can't double and triple count based on the same reasons.

Now, in this particular case, if one were to add up all of the counts and all of the degrees of the offenses, I think you would come to a total of something like 23 years. I think you would come to a minimum parole eligibility of somewhere around 12, 13 years.

Unfortunately, the times when we might have done that just like a snap of the fingers are gone. And I think Bayless and Molino, the prohibition against double counting really can't permit that kind of sentence for this violation of probation. I would suspect that

there are probably three or so, perhaps four, of these counts in the indictments for the sentence of the violation that could be made consecutive.

I would suggest to the Court that in being made consecutive, they also couldn't be maxed, and there couldn't be minimum parole ineligibility tacked onto it because there is a dearth of aggravating factors, there is a dearth of reasons for doing that, since we have to consider the violation as it stood independent of the subsequent events since their original sentencing, except for the fact that some mitigating weight might be lessened.

So I don't think that that's possible, to give that kind of heavy sentence. I would suspect that somewhere in the range of 9 to perhaps 12, 14 years, something like that with no minimum parole eligibility might fall within the Bayless standard.

I am not advocating any of that at this time, Judge. I am not saying that's the wise thing to do. I'm not saying that's the just thing to do. I am merely making some observations, as I went through it, to

determine where we would stand with respect to the defense position.

Given all that, what can I say about the sentence that you would impose on Mr. Highlander today? Mr. Highlander is wearing handcuffs today, and despite all of the options which the Court seems to have, I suggest that there are certain handcuffs on the Court also. Your Honor must sentence to 30 years minimum parole for the homicide charge. You can't sentence to less, and State v. Scales says you can't sentence to more, so we are stuck with 30 years. There is no option about that. I can't argue anything to you about that one way or the other.

The aggravated assault of Patrick Sullivan, a third-degree offense, involving a weapon, it's a Graves Act offense. Your Honor must sentence to three years, can't sentence to more, can't sentence to less. 33 years. There is nothing I can say about any of that. State v. Yarbough or the merger questions indicate concurrent sentence with respect to the other matter.

The question, then, on the homicide

charge is what will you give him between 30 years and life? What will you give him?

I turn, now, to the violation of probation. There is no way that I can conceive that the Court can disregard or be in any way extremely lenient with respect to the violation of probation. I don't think that can happen. In that respect, also, your Honor's hands are tied.

The bottom line, Judge, is that we are looking at a defendant who is going to spend his whole life in prison due primarily, of course, to the minimum parole ineligibilities that will be set.

At first, without the violations of probation, there might have been a prospect, might have been a prospect, that at the end of his life -- and we look now to the tables to see someplace around 41 years from now, he might have spent a year, a brief period of time, a fraction of a second, outside of prison and not on parole. That might have been a possibility. That is no longer a possibility, it seems to me, with these violation of probation charges.

And, so, the only question, the only practical question, aside from all the lawyer talk, aside from all the law and everything else, the only practical question is: Is Mr. Highlander going to die in prison or is he not? That's the only practical question. If he isn't, he is certainly going to be on parole. There is no question about that, given what we have before us.

Is he going to die in prison? Because heaping on extra sentence is going to mean little. After he is dead, they are not going to leave his bones in the cell just to fulfill a sentence that was imposed.

I, in that regard, look away from the technicalities of the law, and perhaps look to a little Shakespeare. I don't think there are any in this courtroom who are complete strangers to the Merchant of Venice. At least not those of us who are beyond our 30th year. The curriculum may have changed somewhat in recent years.

And we have two characters there, and we have a plot that's well known, and we have two very famous speeches, one of which causes us

some consternation today, not just because we reject the flavor of the judgment that was rendered, but because there seems to be -- it seems to be so distasteful that somehow we don't want it associated with us or with any particular group of people. And, on the other hand, we can recall Portia telling us that the quality of mercy is not strained.

I suggest that despite the fact that the legislature in balancing deterence, retribution and rehabilitation has weighed in favor of the crime, has started to weigh in favor of deterence and in favor of retribution, it has not abandoned the traditional sense of justice that says that justice is not only fair, that justice is not only balanced, that justice is not only appropriate with respect to the crime, but no matter how much you weigh in favor of the crime, there is still the element of the drop of mercy.

When I urge for the Court to consider today the only thing I think it can consider, perhaps not for Mr. Highlander's benefit, perhaps not for the State's benefit or

anybody's benefit except our system of justice is that the Court can do one of two things. It can insure Mr. Highlander dies in prison or it can take one step back and look at the quality of justice, look at the quality of our legal system, and say that at an advanced age, at sometime in the '70s we know from our studies and from everything else that the threat that we perceive in this chair is not going to be that threat. It's a threat. It's not going to be the same. And it is worth it for our own sakes to allow him to have that brief second outside of the bars before his life expires from this earth. That's the only thing I can ask the Court today, and that's the only thing I do ask.

I have nothing else to offer, Judge.

THE COURT: Thank you, Mr. Preston. Mr. Talasnik.

MR. TALASNIK: It's the State's position that your Honor should fashion a sentence in such a way as to ensure that Mr. Highlander die in prison. To discuss the word "mercy" in the context of a man who stalks and guns down an unarmed woman simply because she decides

that she will not put up with his violence, simply because she decides to seek refuge in the courts the way the law says that she should, it's difficult to deal with.

Perhaps the only mercy that should be shown to Mr. Highlander should be calculated to reflect the degree of mercy that he showed to Gloria Simonelli after stalking her and finding her and approaching her with a loaded gun and shooting her, and causing her to fall down. He then stood over her body, as she looked up at him still alive and still able to perceive impending death at his hands. He then pulls the trigger dead on and causes her death. Perhaps that level of mercy is the only level that is appropriate.

It is appropriate that every morning that he wakes up and every night when he goes to sleep that he should know that he will die in prison; and only in that way do you begin to approach what must have gone through the mind of Gloria Simonelli as she lie on the ground and looked up at the man that she mistakenly loved at one point in her life point a gun at her as she said, "I don't believe this is

happening to me," knowing that in the next second she would be dead at his hands. That is the level of mercy that Mr. Highlander is entitled to, and it is the State's position that your Honor can and should fashion a sentence that ensures that he will die in prison.

In imposing the sentence, the Court must weigh aggravating and mitigating circumstances, recognizing that the base line for this consideration is that at the least Mr. Highlander be sentenced to 30 years in prison without parole.

I suggest to the Court that in reviewing aggravating circumstances, that the Court can and should find Aggravating Factors Number 1, Number 3, Number 6 and Number 9, that all four of those aggravating factors exist, and that there are no mitigating factors.

With respect to Aggravating Factor Number 1, the nature and circumstances of the offense and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel or depraved manner.

Now, I recognize that any murder can be

viewed as heinous, cruel or depraved, and that we can not consider an element of the offense as separately constituting an aggravating factor; but I suggest to the Court that this particular murder is particularly heinous, cruel or depraved because of the reason that it was done and because of the manner in which it was done.

The reason for the killing, the motive, which was found unanimously and beyond a reasonable doubt by the jury who heard the evidence and who sat through both the guilt and penalty phase, the reason for that murder as determined by that jury was for the purpose of escaping trial or punishment for another offense committed by the defendant.

I suggest that that is a particularly heinous or depraved type of motive, that a man should take it upon himself to decide that his right to be free from going to jail for a crime that he committed earlier is more important than that young girl's right to live, that that motive makes this aggravating factor appropriate.

I also suggest that the manner in which

the murder was committed is particularly heinous, cruel or depraved, and that is because of the manner in which he stood over her the instant before he took her life and pointed the weapon down at her. She was still alive. She was still conscious. She was still able to look up at him and to perceive him and to verbalize her knowledge of impending death. And to then stand astride that woman and take her life in the manner in which he did, the cold and calculated manner in which he did, I suggest that that is a particularly heinous, cruel or depraved act, to know that the victim of the killing is aware of her impending death at his hands.

So I suggest that Aggravating Factor 1 exists.

Aggravating Factor Number 3, the risk that the defendant will commit another offense, that may be inferred, first and foremost, from the existence of a prior record. A prior record which not only includes three separate and distinct indictable crimes which is actually the subject of Aggravating Factor Number 6, but a prior record which includes evidence of

assaultive behavior against woman.

We don't have to rely on just the Pre-sentence Report to be aware of that prior history. It was admitted to in the testimony of the psychologist that was produced by the defense as part of the penalty phase.

Both on direct and later on cross-examination, the psychologist indicated his awareness that this man has a history of physically violent and abusive conduct when it comes to woman dating all the way back to his teens when he was committed to a psychiatric hospital because of a violent outburst over a girl who decided she didn't love him anymore; through Tyler Fitzgerald who signed complaints against him, which were ultimately resolved in municipal court because she was afraid he would kill her; through Phyllis Frangione, who went through a similar incident, and decided not to pursue criminal charges because she was afraid of his threats that he would kill her; and, finally, Gloria Simonelli who paid the ultimate price for deciding that she would attempt to put a stop to his violent treatment of woman.

Someone with that kind of a history predictably is a risk to commit another offense. There is also a risk that the defendant would commit another offense from a review of his attitude throughout the entire investigative process and the evidence that was presented to the Court.

This is a man who consistently and repeatedly blames everybody else but himself for his situation. It was Gloria's fault for having signed complaints against him. It was Gloria's fault for falling out of love with him. It was Patrick Sullivan's fault for happening to walk out into the parking lot when Gloria was there. It was Patrick Sullivan's fault for triggering, allegedly, according to Mr. Highlander, the rage that his loved one would now be loving someone else; and it was the fault of the drugs and the alcohol that he lost control and killed her, when all he really wanted to do was talk to her.

Someone who consistently blames others and who blames substances for his criminal misdeeds is a risk to commit another offense.

And then there is the arrogance level, which I suggest also speaks to his risk to commit another offense: The arrogance of a man to decide that his right not to have his life interfered with by courts and restraining orders and the like; that his right to live his life without the specter of jail is more important than the right of a young woman to live; that his right to commit that crime, to kill that young girl, is so important that in the commission of that crime he was willing to knowingly or purposely create a grave risk of death to another, which is the other aggravating factor that the jury found beyond a reasonable doubt unanimously to exist at the conclusion of the penalty phase.

From all of that, I suggest that Aggravating Factor 3, the risk that the defendant will commit another offense, exists.

Aggravating Factor 6 clearly exists. The Court is prepared to sentence this defendant today on three unrelated, separate and distinct indictable convictions, all of which occurred prior to the occurrence of this criminal homicide. He has that record and

that is an aggravating factor; and, clearly, Aggravating Factor Number 9, the need for deterring this defendant and others from violating the law, exists. It exists over and above the deterence that is self-evident from the need to keep people from killing other members of society. It exists over and above that because of the existence of the Domestic Violence Restraining Order and that history in this case.

Your Honor determined that the criminal contempt is not appropriate for consecutive sentencing, but that it does constitute an aggravating factor for the homicide, and I suggest that the best place to make use of that aggravating factor is with Aggravating Factor 9.

Any Court Order is only worth as much as the person named in the order is to abide by it. All of the domestic violence laws and good intentions in the world will not save a woman or will not save an abused or neglected child, if the people named in those orders don't have sufficient respect for the power and authority of the Court that they are

willing to abide by them, and I suggest that that overriding need for deterence exists in this case as an aggravating factor.

I suggest that none of the mitigating factors contained in Letter B of 2C:44-1 exist. The jury that considered much evidence regarding mitigating factors resulted in a finding by only two of them, that there was only some evidence that the background of the defendant was such that he was entitled to consideration. Given that the aggravating factors far outweigh the mitigating factors, the State asks that the sentence imposed on the murder be that of life with a requirement that 30 years be served before eligibility for parole.

With respect to the aggravated assault, I would request that the Court make the specific finding, as is required by law, that this is a Graves Act offense, that it did involve the use of an operable handgun, and that the invocation of the Graves Act sentence with a three-year mandatory minimum sentence is appropriate.

Finally, with respect to the three

indictments listed in the violation of probation, I would, again, point out to the Court that these are separate and distinct indictments committed at different times as against different victims; that they are appropriate for consecutive sentencing under the principles of Yarbough; that each contain at least or that two of the indictments contain third-degree offenses, one contains a fourth-degree offense; and that the Court has available options which can run these sentences consecutively to each other and to the crime of murder.

It is the State's position that the Court fashion a sentence to ensure the death of Mr. Highlander within the New Jersey State Prison system.

MR. PRESTON: Judge, may I say one thing? I did not go into detail on the mitigating factors, and it's my intention to merely ask the Court to rely on the testimony that you heard at the penalty phase of the trial.

THE COURT: I have before me not only the content of the Pre-sentence Report and the other records, but also may consider all of

the evidence that was adduced both in the penalty phase and in the trial phase.

In that last regard, I will articulate expressly that which is implicit, but should be articulated, and that is with respect to the violations alleged in Count 2 and Count 6 of this indictment. Each of those is, in my view, subject to the mandatory provisions of parole ineligibility specified in 2C:43-6, as I am satisfied based upon the evidence adduced in the trial phase that in fact the defendant during the commission of the offenses was indeed armed with and possessed with the purpose to use unlawfully against the person of another a handgun as described in the statute. And, accordingly, I am satisfied that the provisions of that statute are applicable to the sentencing before me.

Mr. Davis, do I understand correctly that Mr. Preston speaks for you also?

MR. DAVIS: Yes, Judge.

THE COURT: Mr. Highlander, other than what has been presented on your behalf in this report and by counsel, is there anything that you would like to tell me in connection with

the sentencing in any of these?

THE DEFENDANT: Yes, your Honor.

Your Honor, I would like to give you an example. When a prosecutor allows and condones his witnesses for the State to walk into your courtroom and not tell the truth, that is purposely and knowingly, premeditated injustice, which Mr. Talasnik is guilty of.

But it was not to my surprise or anyone else who is familiar with the unfair and shameful tactics in which Mr. Talasnik's office was awarded my conviction. I feel sorry and forgive Mr. Talasnik for his dishonest and cowardly act.

Your Honor, if the Simonelli family is here, I would, from the bottom of my heart, ask you to forgive me for what I did, because I truly did not mean to do what I did. And I --

SPECTATOR: Now you are in jail.

SPECTATOR: Die in jail.

THE DEFENDANT: And I think you are a scumbag from the bottom of my heart. You are a lying scumbag for what you said on the stand.

That's all I got to say, your Honor.

THE COURT: Ladies and gentlemen, I recognize the nature of these proceedings. If there is one other comment by any member of the audience, I will clear the entire court. Be not under any illusions about that.

Mr. Highlander, is there anything else you would like to say?

THE DEFENDANT: That's all, your Honor, other than Nathan Davis did a fine job representing me and Michael Preston, also.

THE COURT: I will start, as did counsel, because I think the law requires an examination of what Mr. Preston calls lawyer talk, and move, as did he, to an overview of what I think the case is about, first, with respect to the old indictments, 590 and the related disorderly persons municipal court complaint, I don't think I mentioned, associated with Indictment 590. It should not be overlooked, I guess, as a municipal court complaint, W842214, for which suspended sentence was also imposed.

On that indictment and complaint and Indictments 233 and 325, first, it is

necessary to articulate the aggravating and mitigating factors. Again, as Bayless and Molino described, the aggravating factors are fixed as at the original proceeding and are available to me here. The mitigating factors were determined at that point, and I am to determine whether there are any based on what later occurred.

I should indicate in the outset, as I mentioned in Mr. Preston's discussion, I agree with him or with his suggestion that although I am not technically sentencing on a violation of probation on Indictment 590, in substance I perceive that I am, and in substance I believe that the same procedure applies as Bayless and Molino suggest in part, because I agree with Mr. Preston. They don't make very much new law. I think, as he indicated, that they articulate that which is implicit or explicit in the statute to begin with.

So I think it applies well here where I am imposing a sentence on a suspended term, even if it wasn't formally in violation of probation.

With respect to Indictment 590 on the

Municipal Court Complaint, the Court originally found, and I find, Aggravating Factor 3, the risk that the defendant will commit another crime; and 9, the need for deterring the defendant and others.

I will have more to say about the substance of those factors in a moment, but those were the factors that were identified and I find, again, exist.

Mitigating factors then provided, which I do not find to be vitiated by the later consequences, are at that time his conduct did not cause or threaten serious harm in the nature of that offense, nor did he contemplate that it would, and at that time he exhibited a willingness to cooperate with law enforcement authorities.

With respect to Indictments 87-02-0233 and 87-02-0325, the same two aggravating factors were found, and I find, again, the risk of commission of another crime and the need for deterence, both of which suggest I will have more to say.

The mitigating factors present in connection with those offenses that were

determined, and I find still exist, were that his conduct didn't cause or threaten serious harm in those cases, nor did he contemplate that it would. As a matter of fact, there is one mitigating factor that was originally found that is vitiated. The Court originally found that he had compensated or would compensate for the damage caused, and I am satisfied that that is no longer an appropriate mitigating factor to consider. But I also find, as did the original sentencing Court, that there is a mitigation then in his willingness to cooperate with law enforcement authorities.

Before I proceed to the aggravating and mitigating factors attendant to the homicide indictment, let me address the general questions regarding the Bayless and Molino determinations and factors respecting the violations of probation. These violations of failures to remain law-abiding are willful. They establish, to my satisfaction, that the defendant is imperious to the law. He will decide what he wants to do, as and when he wants to do so.

I am satisfied that there is a substantial risk of the commission of other crimes, including specifically other crimes of violence being committed by this defendant.

The original aggravating factors in each of the matters identifying the risk that the defendant will commit another crime are just as applicable here, but I may now consider, and Bayless and Molino make it clear that I may consider, not an additional aggravating factor, but I may consider the weight and substance to be afforded to the aggravating factor that was originally applied by an evaluation of the defendant's present state. It is analogous, I suggest, to the process of the capital phase process of identifying aggravating and mitigating factors, and then weighing and evaluating the substance of each and according them the relative significance.

I am satisfied in connection with the identification of the risk of the commission of another crime that principally for that risk, and for the purpose of deterring this defendant's ability to commit other crimes, particularly other crimes that would involve

violence, that substantial periods of incarceration are required with respect to the violations of probation.

Principally, again, with focus on the risk of the commission of another crime and the need for deterring the defendant, that analysis applies to both the violation of probation on the original indictment and the associated Municipal Court Complaint, as well as the later violations of probation.

Furthermore, I am satisfied that the nature and degree of that risk are sufficiently serious and sufficiently weighty, given the defendant's perceptions, his attitudes, his substance abuse problems, and his general background, such that the aggravating factors are sufficiently weighty compared with the mitigating factors so as to justify not only a sentence longer than the presumptive term, but also an appropriate term of parole ineligibility. I will have more to say about that in a few minutes in overall context.

But understanding that Bayless and Molino identify the appropriate case as rare for a

determination that an original sentence of probationary supervision should now be converted into a sentence with the aggravating factors outweighing the mitigating factors with a term of parole ineligibility, it is rare. It should be rare.

It should be emphasized for this process, however, that at the time of the original determination to make a probationary sentence, several things applied then that don't apply now.

In the first place, those terms were placed in part on recommendation of the State. In the second place, at least in the first instance, the defendant had no serious prior criminal record before that time, which is, of course, a factor that must be continued to be evaluated. In the second instance, of course, he not only had a record, but at the time of his commission of the offenses in Indictments 233 and 325 he was already on probationary supervision, a fact which I must consider.

I keep in mind also that in connection with the first indictment, 590, this is the third opportunity for the imposition of

sentence; that is to say, it was imposed originally in 1987 -- '86. It was reevaluated in 1987 and sentence was suspended, and he is now before me for a third time on that same charge.

I recognize that Bayless and Molino do not define rare. It is left to people like me to define rare subject to being second-guessed, and that's the nature of the process.

MR. PRESTON: Judge, may I invite the Court's attention to State v. Bayless at page 175.

THE COURT: I read it last night, Mr. Preston. I am familiar with what it says. I am satisfied that if a trial Court can not on a third attempt that is precipitated by a commission of a homicide reevaluate the substance of the original aggravating factor of the risk of the commission of another crime so as to afford that factor substantially increased weight and importance, then the cases have no meaning that I can discern.

With respect to the violations of probation, the question is also presented as

to concurrency or consecutiveness. The original presentation by the State and accepted by the Court was that the Municipal Court Complaint should be sentenced concurrent with the Indictment 590 and that the Indictments 233 and 325 should be sentenced concurrent with each other. To do otherwise at this point would seem to me to cross the line that Bayless and Molino and Yarbough suggest.

On the other hand, I am satisfied that in order to give meaning and substance to the system of probationary supervision and in order to justify Yarbough's requirement that there be no such thing as a free crime, the sentence imposed on the violations of probation on the latter two indictments must be imposed consecutive to and separate and apart from the violations of the Municipal Court Complaint and the original indictment of 590 and, furthermore, that those consecutive sentences must be imposed consecutive to and separate and apart from the commitments imposed on the new indictment for homicide and for aggravated assault. I am satisfied in

Yarbough's standards in governing these determinations.

The crimes were separate and unrelated, except the two 1987 indictments which were legally joined, if not factually. Concurrent sentences either within the violations of probation or for any of the violations and the homicide indictment would in effect provide for two free crimes. While the second and the third offenses may be considered concurrently for the reasons I have indicated, they should be imposed consecutive to the first and to the new charges.

Turning to the last indictment, 1443, there are, in my view, four aggravating factors. First, there is the aggravating factor of the nature and circumstances of the offense. Now, let me start by indicating I do not consider the nature and extent of any seriousness of harm inflicted, because that is subsumed, in my view, within the elements of the offense of homicide. But I consider in this context the fact that this offense was committed in violation of a Court Order to stay away from her.

I consider that it was essentially, for the kinds of reasons suggested by Mr. Talasnik, especially cruel. I consider also the jury's unanimous determination that the purpose of the homicide was for the assault on the integrity of the judicial process, a factor that I may consider as a circumstance of the offense, and that I consider to be in aggravation.

I consider as well Aggravating Factor Number 6, the nature and extent of the defendant's prior record, including the fact that not only these crimes were committed while under probationary supervision, but also after three opportunities had been afforded to conform his conduct to the requirements of the law.

The risk that the defendant will commit another crime is difficult to articulate appropriately. I will have some more to say about it in a minute, but I am satisfied from the nature of the testimony presented, particularly in the penalty phase, that this defendant is what he is and is what he will always be, and that there is no reasonable

prospect to the extent that the criminal justice system talks about rehabilitation. There is no reasonable prospect of rehabilitation here. His character and his attitudes, in my view, suggest that, given the opportunity, an incident such as this, whether it results in death or not, is more likely than not.

Lastly, the need for deterence, and I refer here to the deterence of this defendant, it is axiomatic that society must deter homicide. It is also, I fear, true that laws, even capital punishment laws, do not and can not statistically be shown to have had a substantial impact in the deterence of other homicides.

When I refer to deterence here, I am referring to the deterence of this defendant in his capacity of the commission of other crimes.

Turning, then, to an overview, the analysis of this case is, allthough indeed tragic, less complicated than it may appear. This is the story of a young man who from the time of his youth has shown an awful and

ultimately terrifying ability to destroy the lives of the woman with whom he has become involved. He has threatened them and beaten them. He has stabbed them, bullied and brutalized them physically and emotionally; and, of course, in the end, perhaps inevitably, one lies dead at his hand.

Mr. Highlander has told the Court that he loved Gloria Simonelli. I watched him as he examined the photographs of her on the medical examiner's table, and I saw his dispassionate, clinical evaluation of the evidential value of the pictures. I need no words or tears now to tell me what he loved and what he now regrets. He loved being loved and he regrets that she did not show him love and the represent he considered his due.

While it is, indeed, true that what he is and will always be is to a substantial degree a product of forces over which he had no control, this is a fact of little significance to his victims and no consequence in the evaluation of his potential to cause harm to others in the future.

Given the opportunity, he will again,

inevitably, seek from others, particularly woman, the love and companionship he needs; and he will, just as inevitably, fall in love not with the woman, but with the attention, care and love he receives from her. Whenever, in his estimation, this attention flags, whenever he considers that he is not being shown the respect or the deference he deserves, he will have the capacity to destroy what he can not possess and anything or anyone that he perceives to be a threat to his purpose.

The principal, indeed overriding, focus of the appropriate sentence in this matter is thus clearly established. Considering the nature and degree of the risk of the commission of another crime, the maximum possible incarceration is required to deter this defendant and to protect the community.

In view of the virtual certainty that no rehabilitation in the criminal justice context is conceivable, maximum restrictions on parole eligibility are also indicated, although it is to be hoped, and it is urgently recommended, that the Parole Board in its discretion will

see fit to deny parole to this defendant at anytime during the remainder of his life.

With respect to the first, second, and fifth counts of Indictment 86-03-0590, the defendant is committed to the custody of the commissioner of corrections for a term of five years. He shall receive appropriate credit for time served. He shall serve 2-1/2 years of that commitment in each instance without parole eligibility. Those commitments are, except for the Violent Crimes Compensation Board penalties, to be imposed concurrently with each other. There is in each instance a Violent Crimes Compensation Board penalty payment, which is consecutive.

On the eighth count of that indictment, he is committed to the custody of the commissioner of corrections for a term of 18 months, and shall receive appropriate credit for time served. He will pay a $30 Violent Crimes Compensation Board penalty, which is consecutive, and the remainder of the commitment is concurrent with the remaining counts of that indictment.

On the disorderly persons Municipal Court

Complaint WH42214, he is committed to the Atlantic County Jail for a term of six months. Appropriate credit for time served on that Complaint is afforded. That commitment is concurrent with the Indictment 86-03-0590, except for the Violent Crimes Compensation Board penalty of $30, which is imposed consecutively.

On indictment 87-02-0233, the first count, the defendant is committed to the custody of the commissioner of corrections for a term of five years. He shall serve 2-1/2 years before being eligible for parole consideration. He shall receive appropriate credit for time served on that charge and shall pay a $30 Violent Crimes Compensation Board penalty. That sentence is imposed consecutive to the sentence imposed on Indictment 86-03-0590 and the related Municipal Court Complaint.

On Indictment 87-02-0325, the second count, the defendant is committed to the custody of the commissioner of corrections for a term of 18 months. He shall receive appropriate credit for time served, and a $30

Violent Crimes Compensation Board penalty is imposed. That sentence is concurrent, except for the Violent Crimes Compensation Board penalty, with 87-02-0233, and is consecutive to the sentencing on Indictment 86-03-0590 and the related Municipal Court Complaint.

With respect to Indictment 88-06-1443, the first count, the defendant is committed to the custody of the commissioner of corrections for the remainder of his life. He shall receive 435 days' credit for time served. He shall serve 30 years before being eligible for parole consideration on that charge. He shall pay a Violent Crimes Compensation Board penalty of $100. That sentence is imposed consecutive to the sentence in Indictment 86-03-0590 and, likewise, consecutive to the concurrent sentences imposed on Indictments 87-02-0233 and 87-02-0325.

On the second count of Indictment 1443, the defendant is committed to the custody of the commissioner of corrections for a term of ten years. He shall receive 435 days' credit on that commitment, and shall serve a term of five years before being eligible for parole

consideration.

The record should reflect my determination. Three of those years are as required by statute, and the remaining two are as a result of my evaluation of the fact that the aggravating factors, as I have outlined them in this matter, are sufficiently serious, particularly considering the circumstances of the offense, and the need for deterring this defendant, and the risk of his commission of other crimes, so as to justify a parole eligibility beyond the mandatory minimum required by law. You will pay a $30 Violent Crimes Compensation Board penalty on that charge, which is consecutive.

With respect to the third count of the indictment, the defendant is committed to the custody of the commissioner of corrections for a term of 18 months. He shall receive 435 days on that count which is imposed concurrently to Counts 1 and 2 of this indictment, and the Violent Crimes Compensation Board penalty of $30 is imposed consecutively.

With respect to the sixth -- excuse me,

the seventh count of Indictment 1443, the defendant is committed to the custody of the commissioner of corrections for a term of five years, and shall, for the reasons just a moment ago indicated in the second count, serve a period of 2-1/2 years before being eligible for parole, and shall receive 435 days' credit for time served in connection with that commitment. That commitment is concurrent with the commitment imposed on Counts 1, 2 and 3 of this indictment for the reasons indicated, and a $30 Violent Crimes penalty is imposed consecutive to the other Violent Crimes penalties.

Lastly, on the sixth count of the indictment, the defendant is committed to the custody of the commissioner of corrections for a term of five years. By operation of law, he will serve three years of that commitment before being eligible for parole, and will pay a $100 Violent Crimes Compensation Board penalty. The commitment on the sixth count of that indictment is imposed consecutive to the other counts of that indictment, Counts 1, 2, 3 and 7 and, by definition, consecutive to the

commitments on the other indictments.

Mr. Highlander, you have 45 days from today within which you may file an appeal from any of the proceedings in this case or these cases. If you need an attorney for the appeal, and you are eligible and qualify and can not afford one, one may be appointed to represent you.

Thank you, gentlemen.

(Whereupon the proceeding adjourned.)

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C E R T I F I C A T I O N

I, Lucille A. Kelly, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify the foregoing is a true and accurate transcript taken from my original stenographic notes.

DATED: Oct. 24, 1989

Lucille A. Kelly

LUCILLE A. KELLY, CSR, RPR

State of New Jersey

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DIVISION OF
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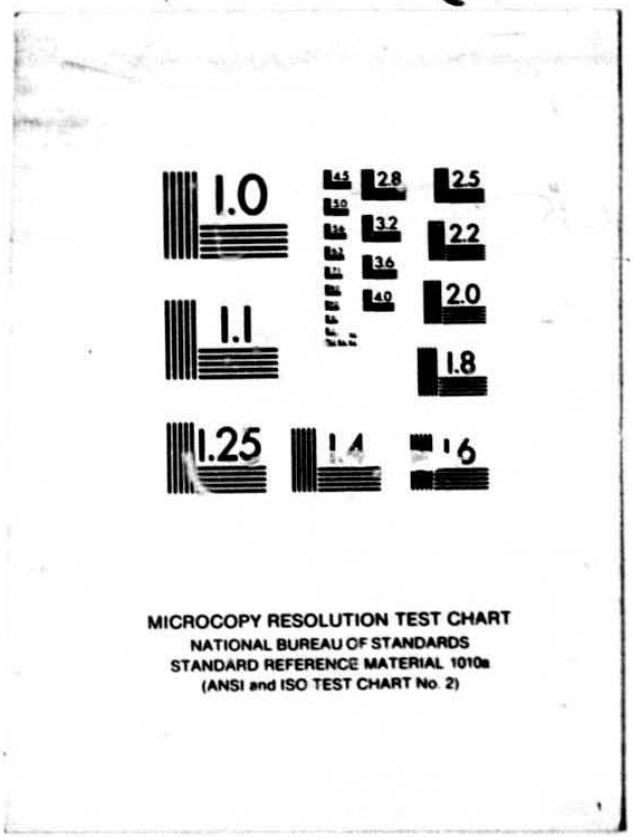

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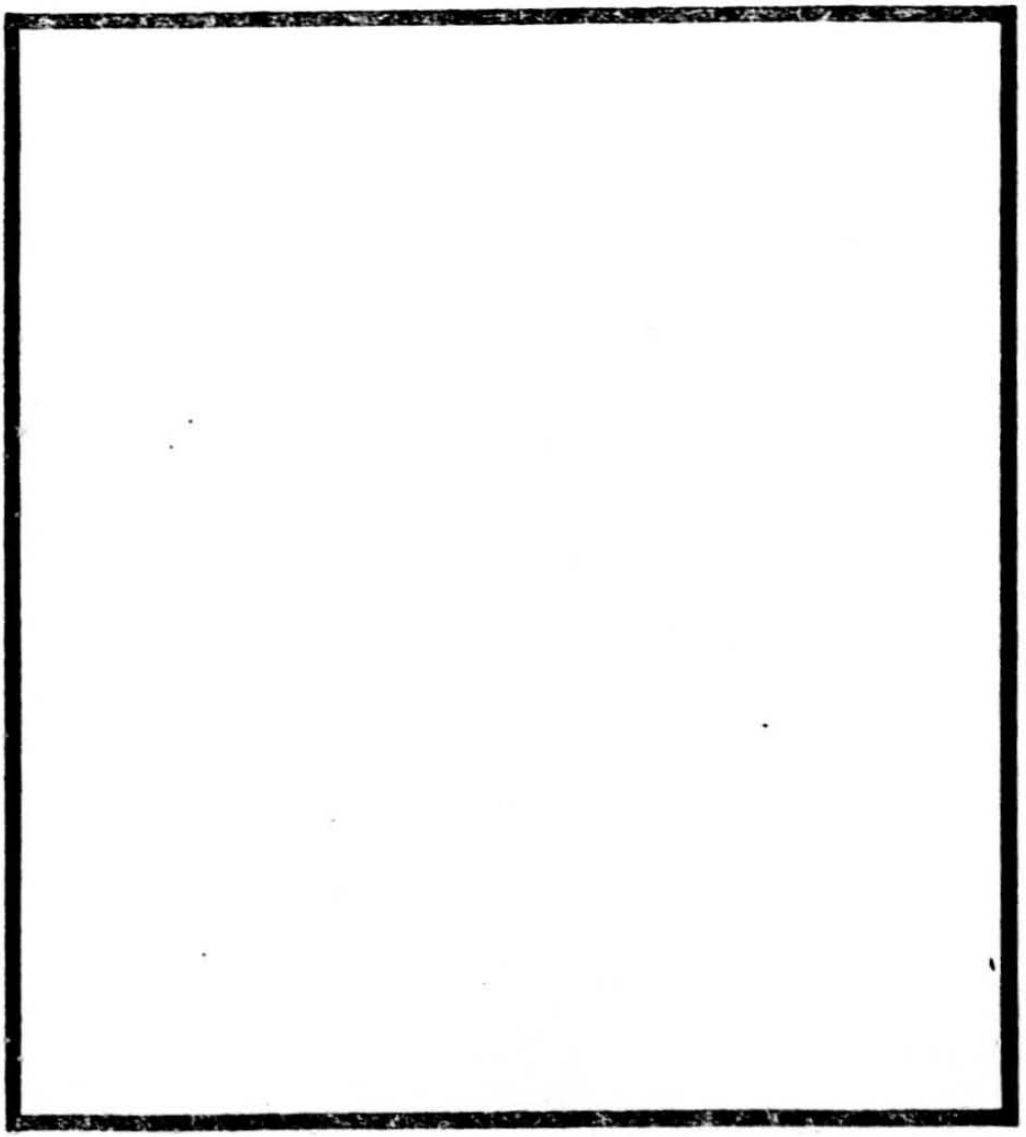

C E R T I F I C A T I O N

I, GERALD W. ABARNO, A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER OF THE STATE OF NEW JERSEY, DO HEREBY CERTIFY THAT THE FOREGOING MATTER IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN AT THE TIME AND PLACE HEREINBEFORE SET FORTH.

GERALD W. ABARNO, CSR
OFFICIAL COURT REPORTER
LICENSE NO. XI00326

DATE: November 14, 1991

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