

COMMONWEALTH v. GRABELSKY

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CASE SUMMARY

The defendant, Max Grabelsky, is an FBI agent assigned to the Organized Crime Task Force (OCTF) of the Buffalo-Niagara Police Department. Agent Grabelsky has been charged with Theft by Unlawful Taking, Robbery, and Second Degree Murder stemming from his alleged complicity in the theft of approximately \$5.5 million from the Off Track Betting (OTB) of Buffalo-Niagara that resulted in the deaths of Luther Bybel, an OTB employee who was allegedly in on the theft and Chester Krupczyk, an OTB patron who was present at the OTB parlor when the theft took place.

The Commonwealth alleges that Agent Grabelsky, while purporting to be working undercover as a member of the White Russians, an organized crime group, facilitated the crime by purposely withholding critical information about the crime until the eleventh hour and then intentionally giving the OCTF false, inaccurate, or misleading information about the details of the theft with the result that the OCTF agents went to the wrong OTB branch while Grabelsky and his White Russian co-conspirators, Lyman Zyrga, Kyser Sosay, and White Russian kingpin, Rolo Tomassi, were committing the crime at another OTB location.

During the course of the crime, Tomassi murdered Luther Bybel by breaking his neck inside the OTB vault and then shot Chester Krupczyk in the abdomen as he exited the parlor. Before expiring, Krupczyk, an inveterate gambler, pulled out a gun and shot Zyrga in the posterior as he left the OTB parlor behind Agent Grabelsky. By the time the OCTF agents arrived on the scene in response to a 911 call, Zyrga was incapacitated from his injury, Agent Grabelsky was tending to the dying Krupczyk, and Sosay and Tomassi had gotten away. They are still at large.

Captain Karl Kowalski of the OCTF interviewed Lyman Zyrga who, after retaining counsel, agreed to cooperate with the OCTF and testify against Agent Grabelsky (and against Tomassi and Sosay if they are ever apprehended), in exchange for a guilty plea to Robbery in the First Degree upon a 10-year sentence commitment in lieu of a potential 25 years to life sentence for Second Degree Murder.

The Commonwealth contends that Agent Grabelsky purposely misled the OCTF about the OTB theft to get back at Captain Kowalski for exerting what he (Grabelsky) believed was excessive influence in the prosecution of his older brother, Ziggy Grabelsky, a lifelong Tomassi friend and enforcer, who got fifteen years on an Assault charge after refusing to roll over on Tomassi. This incident allegedly prompted the Grabelskys' ailing father, Edward Grabelsky, to take his own life.

In addition, Grabelsky needed money to continue his relationship with a paramour, Matty Walker. Ms. Walker had threatened to break up with Grabelsky because of the dangerousness of his work and the amount of debt that he owed. The theft from the OTB parlor would have enabled Grabelsky to leave his job with the FBI and support her. However, there is a possibility that Walker was working with Tomassi and participated in the plot to mislead the OCTF while keeping Grabelsky in the dark.

The defense denies that Agent Grabelsky, a decorated war hero and highly regarded FBI agent, misled the OCTF in any way. They contend that Agent Grabelsky kept the OCTF fully apprised of all of his undercover activities with the White Russians and advised Captain Kowalski of certain late-developing changes in the OTB theft plan as soon as he could without jeopardizing his own life.

According to the defense, it was Captain Kowalski's misinterpretation of Agent Grabelsky's message that resulted in the OCTF's going to the wrong OTB location. The defense further alleges that Captain Kowalski was so bitter over his failure to make a case against Rolo Tomassi and advance his own career, that he blamed Agent Grabelsky for the OCTF's colossal error in this case on the word of an organized-crime figure (Zyrga) who has cut a deal for his testimony.

FACTUAL STIPULATIONS

The parties stipulate to the following facts:

1. On the afternoon of July 13, 2018, the defendant left the envelope and note at the OCTF office. The envelope was placed on Captain Kowalski's desk and addressed to him.
2. The person appearing in the photograph on the lower left corner of the photo album page directly above the word "me" is the defendant.
3. The note beginning "Dear Maxim" was written by the defendant's father, Edward Grabelsky.
4. The diagram of the OTB parlor at 99 76th St is a fair and accurate representation of the OTB interior at all relevant times.
5. The 911 call of "people with guns" in the OTB parlor at 99 76th St. was placed at 4:36 p.m. on the day of the burglary.
6. The back room of the OTB where the vault is located is open only to authorized OTB employees.
7. OTB records from the branch at 99 76th St. indicate that a total of \$5,210,244.00 in cash was on hand in the vault at the close of business on the day of the burglary. There was no cash inside the vault when OCTF agents entered it later that day.
8. Luther Bybel's cause of death was determined by Buffalo-Niagara Medical Examiner, J.J. Gittes, M.D. to be asphyxiation secondary to a fracture of the hyoid bone.
9. Dr. Gittes also determined that Chester Krupczyk died as a result of massive bleeding secondary to a gunshot wound of the abdomen. The bullet removed from the deceased was a .38 caliber.
10. Lyman Zyrga has not yet been sentenced for his plea to Burglary in the First Degree.
11. Flight records from Jet Blue Airways indicate that on June 23, 2018, Harry Gondorff, the 76th St. OTB branch manager, reserved round-trip tickets from Buffalo-Niagara to Las Vegas, leaving Buffalo-Niagara at 7:00 p.m. on Thursday, July 12, 2018 and leaving Las Vegas at 6:00 p.m. on Sunday, July 15, 2018.
12. Guest records and receipts from the Gold Nugget Hotel/Casino indicate that on June 22, 2018, Harry Gondorff made reservations at that hotel from Thursday night, July 12, 2018 through Sunday, July 15, 2018.

13. OTB personnel records indicate that on June 23, 2018, Harry Gondorff had requested a vacation day for Friday, July 13, 2018, but was denied by OTB because another branch manager, Doyle Lonergan, had already been approved for vacation for that entire week.
14. OTB personnel records further indicate that Harry Gondorff called in sick in the early morning hours of July 13, 2018 and that Lyther Bybel, the 19th St. OTB branch manager, was assigned to OTB to fill in for Gondorff at the 76th St. branch.
15. Harry Gondorff was fired by OTB on Monday, July 16, 2018. He has left the jurisdiction and is unavailable as a witness.

EVIDENTIARY STIPULATIONS

1. The Federal Rules of Criminal Procedure and the Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence can, if asked, identify the same at trial.
3. You are not permitted to attempt to impeach a witness by questioning the witness or arguing to the jury that a signature appearing on a document does not comport with signatures or initials located on an exhibit.
4. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
5. "Beyond the record" shall not be entertained as an objection. You believe that a witness is inventing facts, you may impeach through cross-examination using facts found in the record.
6. Each party must call the two witnesses listed as that party's witnesses on the witness list.
7. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.
8. Presentation and argument of pretrial motions shall be at the discretion of the trial judge. There shall be no written pretrial motions.

WIDENER CRIMINAL CODE – Selected Sections

Sec. 101 Criminal homicide.

- (a) *Offense defined.* --A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being.
- (b) *Classification.* --Criminal homicide shall be classified as murder, voluntary manslaughter, or involuntary manslaughter.

Sec. 102 Murder.

- (a) Murder of the first degree. A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing.
- (b) Murder of the second degree. A criminal homicide constitutes murder of the second degree when it is committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony.
- (c) Murder of the third degree. All other kinds of murder shall be murder of the third degree. Murder of the third degree is a felony of the first degree.
- (d) Definitions. As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Fireman." Includes any employee or member of a municipal fire department or volunteer fire company.

"Hijacking." Any unlawful or unauthorized seizure or exercise of control, by force or violence or threat of force or violence.

"Intentional killing." Killing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.

"Perpetration of a felony." The act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

"Principal." A person who is the actor or perpetrator of the crime.

Sec. 201 Theft by unlawful taking or disposition.

- (a) Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.
- (b) Immovable property. A person is guilty of theft if he unlawfully transfers, or exercises unlawful control over, immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

Sec. 221 Grading of theft offenses.

- (a) Felony of the second degree. Theft constitutes a felony of the second degree if:
 - (1) The offense is committed during a manmade disaster, a natural disaster or a war-caused disaster and constitutes a violation of section 3921 (relating to theft by unlawful taking or disposition), 3925 (relating to receiving stolen property), 3928 (relating to unauthorized use of automobiles and other vehicles) or 3929 (relating to retail theft).
 - (2) The property stolen is a firearm.
 - (3) In the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm.
 - (4) The property stolen is any amount of anhydrous ammonia.
- (a.1) Felony of the third degree. Except as provided in subsection (a) or (a.2), theft constitutes a felony of the third degree if the amount involved exceeds \$2,000, or if the property stolen is an automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.
- (a.2) Felony of the first degree. Theft constitutes a felony of the first degree if, in the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm and the receiver is in the business of buying or selling stolen property.
- (b) Other grades. Theft not within subsection (a), (a.1) or (a.2), constitutes a misdemeanor of the first degree, except that if the property was not taken from the person or by threat, or in breach of fiduciary obligation, and:
 - (1) the amount involved was \$50 or more but less than \$200 the offense constitutes a misdemeanor of the second degree; or

- (2) the amount involved was less than \$50 the offense constitutes a misdemeanor of the third degree.
- (c) Valuation. The amount involved in a theft shall be ascertained as follows:
- (1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.
- (2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:
- (i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.
- (ii) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
- (3) When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in paragraphs (1) and (2) of this subsection its value shall be deemed to be an amount less than \$50. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.
- (d) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
- "Manmade disaster."* Any industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or other condition, except enemy action, resulting from manmade causes, such as oil spills and other injurious environmental contamination, which threatens or causes substantial damage to property, human suffering, hardship, or loss of life.
- "Natural disaster."* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion,

or other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.

"War-caused disaster." Any condition following an attack upon the United States resulting in substantial damage to property or injury to persons in the United States caused by use of bombs, missiles, shellfire, nuclear, radiological, chemical or biological means, or other weapons or overt paramilitary actions, or other conditions such as sabotage.

Sec. 301 Robbery.

(a) Offense defined.

- (1) A person is guilty of robbery if, in the course of committing a theft, he:
 - (i) inflicts serious bodily injury upon another;
 - (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury;
 - (iii) commits or threatens immediately to commit any felony of the first or second degree;
 - (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury;
 - (v) physically takes or removes property from the person of another by force however slight; or
 - (vi) takes or removes the money of a financial institution without the permission of the financial institution by making a demand of an employee of the financial institution orally or in writing with the intent to deprive the financial institution thereof.

(2) An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission.

(3) For purposes of this subsection, a "financial institution" means a bank, trust company, savings trust, credit union, or similar institution.

(b) Grading. Robbery under subsection (a)(1)(iv) and (vi) is a felony of the second degree; robbery under subsection (a)(1)(v) is a felony of the third degree; otherwise, it is a felony of the first degree.

JURY INSTRUCTIONS

PRESUMPTION OF INNOCENCE – BURDEN OF PROOF – REASONABLE DOUBT

1. A fundamental principle of our system of criminal law is that the defendant is presumed to be innocent. The mere fact that he was arrested and is accused of a crime is not any evidence against him. Furthermore, the defendant is presumed innocent throughout the trial and unless and until you conclude, based on careful and impartial consideration of the evidence, that the Commonwealth has proven him guilty beyond a reasonable doubt.
2. It is not the defendant's burden to prove that he is not guilty. Instead, it is the Commonwealth that always has the burden of proving each and every element of the crime charged and that he defendant is guilty of that crime beyond a reasonable doubt. The person accused of a crime is not required to present evidence or prove anything in his own defense. If the Commonwealth's evidence fails to meet its burden, then your verdict must be not guilty. On the other hand, if the Commonwealth's evidence does prove beyond a reasonable doubt that the defendant is guilty, then your verdict should be guilty.
3. Although the Commonwealth has the burden of proving that the defendant is guilty, this does not mean that the Commonwealth must prove its case beyond all doubt and to a mathematical certainty, nor must it demonstrate the complete impossibility of innocence. A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his or her own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence presented with respect to some element of the crime. A reasonable doubt must be a real doubt; it may not be an imagined one, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.
4. So, to summarize, you may not find the defendant guilty based on a mere suspicion of guilt. The Commonwealth has the burden of proving the defendant guilty beyond a reasonable doubt. If it meets that burden, then the defendant is no longer presumed innocent and you should find him guilty. On the other hand, if the Commonwealth does not meet its burden, then you must find him not guilty.

THEFT BY UNLAWFUL TAKING OR DISPOSITION--MOVABLE PROPERTY

1. The defendant has been charged with theft of movable property. To find the defendant guilty of this offense, you must find that the following four elements have been proven beyond a reasonable doubt:

First, that the defendant took or exercised control over the sum of \$5,210,244.00;

Second, that the \$5,210,244.00 was movable property of another. "Movable property" is property the location of which can be changed;

Third, that the taking or exercising of control was unlawful; and

Fourth, that the taking or exercising of control was with the intent to deprive the OTB of its property.

2. A person acts with intent if it is his or her conscious object to engage in such conduct or cause such a result.

ROBBERY--FELONY OF THE FIRST DEGREE

1. The defendant has been charged with robbery. To find the defendant guilty of this offense, you must find that the following two elements have been proven beyond a reasonable doubt:

First, that the defendant:

- a. inflicted serious bodily injury on the victim; or
- b. threatened the victim with serious bodily injury; or
- c. intentionally put the victim in fear of immediate serious bodily injury; or
- d. committed or threatened to immediately commit the felony of assault with a deadly weapon; and

Second, the defendant did this during the course of committing a theft.

2. "During the course of committing a theft" means that you can find the defendant guilty if you find beyond a reasonable doubt that he did these things either while actually committing a theft, attempting to commit a theft, or while fleeing after either committing or attempting to commit a theft. A theft, of course, means taking unlawful control of or exercising unlawful control over someone else's property intending not to give it back.
3. "Serious bodily injury" is defined in the law as a bodily injury that creates a serious risk of death or causes serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ. This means an injury that causes a substantial risk that the victim will die or an injury that permanently and seriously disfigures the victim, or that causes a long-term loss or limitation on the use of any part of the body.

SECOND-DEGREE MURDER

1. I will start with some terminology and basic principles. The more serious types of crimes are called felonies. For example, robbery is a felony. Second-degree murder is often called felony-murder because it is a killing connected with a felony. When two people are partners in a successful or unsuccessful attempt to commit a felony and one of them kills a third person, both partners may be guilty of felony-murder.
2. The defendant has been charged with second-degree murder, that is, felony murder. To find the defendant guilty of this offense, you must find that the following four elements have been proven beyond a reasonable doubt:

First, that Rolo Tomassi killed Luther Bybel;

Second, that Rolo Tomassi did so while he and the defendant were partners in committing a certain robbery;

Third, that Rolo Tomassi did the act that killed Luther Bybel in furtherance of the robbery; and

Fourth, that the defendant was acting with malice. You may find that the defendant was acting with malice if you are satisfied beyond a reasonable doubt that he and Rolo Tomassi were partners in committing or attempting the robbery. Because robbery is a crime inherently dangerous to human life, there does not have to be any other proof of malice.

4. Going back to the requirement that the defendant and Rolo Tomassi were partners in committing the robbery:

I instruct you that they were partners if they were both principals or one of them was a principal and the other was an accomplice. A person is a "principal" if he or she actually commits the crime or makes the attempt himself or herself. A person is an "accomplice" if, with the intent of encouraging or helping the commission of the crime he or she asks the principal to commit it or helps or agrees or attempts to help the principal in committing it.

I instruct you that they were partners if they conspired to commit the robbery. Two people "conspire" to commit a crime if, with the intent of encouraging or helping the commission of the crime, they agree that one or both of them will commit the crime or that one of them will help the others in planning or committing it. Their agreement may be express and verbal--they may actually talk about it. Or their agreement may be an unspoken agreement that can be inferred from their words and conduct and the

surrounding circumstances. Each knows what the other is thinking--they don't have to talk about it. Finally, to complete the conspiracy, one of the conspirators must commit what the law calls an overt act. An overt act is an act by any member of the conspiracy that would serve to further the goal of the conspiracy. Here, the Commonwealth contends that the robbery was such an act.

5. I shall now explain the meaning of the "in furtherance" element:

A partner's act that kills is not in furtherance of the felony if the partner does the act for his or her own personal reasons that are independent of the felony.

A partner's act that kills is in furtherance of the felony if he or she does the act while fleeing from the scene and if there is no break in the chain of events between the felony and the act. However, even though the partner's act that kills may seem to meet these requirements, it is not in furtherance of the felony if the partner does the act for his or her own personal reasons that are independent of the felony and the effort to flee.

GRAND JURY TESTIMONY OF MAX GRABELSKY
August 8, 2018

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The witness first being sworn:

Assistant District Attorney (ADA): Mr. Grabelsky, before you testify before this Grand Jury, do you hereby swear to waive immunity from prosecution?

Max Grabelsky (MG): I do.

ADA: And, after consulting with your attorney who is also present here this morning, do you acknowledge that your decision to waive immunity is a knowing, voluntary and intelligent decision?

MG: Yes.

ADA: Do you wish to make a statement before I ask you questions about the homicides that occurred on July 13, 2018 at the OTB parlor at 99 76th Street here in Buffalo-Niagara?

MG: Yes. First, I want to express my deepest sorrow on account of the deaths of Luther Bybel and especially Chester Krupczyk who was an innocent victim in this tragic mess. I also regret the fact that Rolo Tomassi and Kyser Sosay got away with these terrible crimes. This would not have happened, however, if Captain Kowalski had dispatched his team to the 76th Street OTB branch as I had instructed him to do on the afternoon of July 14th. Now, after years of loyal service to my country and to law enforcement, I find myself in this predicament, having to defend my honor and loyalty because the government has decided to take the word of a criminal who cut a deal to save himself from spending the rest of his life in prison.

ADA: I presume you are referring to Lyman Zyrga?

MG: That's exactly who I'm referring to.

ADA: Before asking you specific questions about what happened on July 13, 2018 at the OTB Parlor, I'd like to cover some background. First of all, you're 47 years old, correct?

MG: Yes. I was born on May 15, 1971.

ADA: And could you please tell us your marital status?

MG: I'm single. I've been divorced since 2012.

ADA: Your ex-wife, Marla Maples-Grabelsky currently lives in Chicago with your son, Max Grabelsky, Jr., correct?

MG: Actually, since the divorce it's just Marla Maples. And yes she resides in Chicago. After the divorce we had joint custody of Max, Jr. until I moved back to Buffalo-Niagara in 2014. And Max, Jr. lives on campus at the University of Chicago where he is a sophomore.

35 ADA: And are you required to pay alimony and child support?

36 MG: Yes, I pay both because my ex is not working despite her expensive appetite for clothing,
37 cosmetics, jewelry, and living the high-life, which I could never really afford. That and
38 the fact that I spent so much time away from home working undercover caused our
39 break-up. Plus, aside from what little financial aid Max gets from the University of
40 Chicago, I'm responsible for covering our end of the bill, which amounts to \$48,000 a
41 year. I have to take a loan to cover it.

42 ADA: And how much is your monthly alimony and child support obligation?

43 MG: Altogether, I pay \$3,000 a month which I think is excessive, but the judge really stuck it
44 to me in Family Court after a contentious hearing. That and the attorney's fees really
45 put a drain on my finances.

46 ADA: And what if any other debts do you have?

47 MG: I have about \$5,500 due on my MasterCard, which I pay off at a minimum of \$150.00
48 per month and \$12,000 on my VISA, which I pay at \$200.00 per month.

49 ADA: What about mortgage or rent?

50 MG: Since returning to Buffalo-Niagara in 2014, I have been living in my parent's house which
51 is paid off except for taxes which are about \$3,500 annually. So I've been lucky to be
52 able to live there rent-free while my brother Ziggy was in jail and my dad was ill. Ziggy
53 and I both inherited the house after our father died in 2015. Obviously, Ziggy no longer
54 lives there since his arrest. So, my only obligation with respect to the home is the annual
55 tax bill and maintenance.

56 ADA: Anything else?

57 MG: Anything else what?

58 ADA: Do you have any other expenses?

59 MG: Other than food, clothing and normal expenses, just my car payment to Ford Motor
60 Credit of \$350.00 per month on my Explorer.

61 ADA: How much do you still owe on the Explorer?

62 MG: Around \$16,000.

63 ADA: And when you mention food and clothing, you're not just talking about food and
64 clothing for yourself, are you?

65 MG: If you're talking about Matty, I don't pay any of her living expenses anymore.

66 ADA: Just for the record, who is Matty?

67 MG: Just for the record, she's the woman I lived with until July 13, 2018.

68 ADA: And you did pay her living expenses up until July 13, 2018, isn't that true?

69 MG: Yeah, I paid some of them.

70 ADA: We'll get back to Ms. Walker in a few minutes, but for now I'd like to ask a couple more
71 questions about your income. Your annual salary is around \$75,000?

72 MG: That's right. Can I ask why you're so interested in my finances?

73 ADA: Well, isn't it true that in June 2018, Rolo Tomassi came up with a plan to steal over five
74 million dollars from the OTB with the assistance of any inside man, Luther Bybel?

75 MG: Yes.

76 ADA: And isn't it also true that you had persuaded Rolo Tomassi to believe that you were
77 working for him as part of his loan sharking operation?

78 MG: Well, it was originally his idea, but I eventually convinced him that I was for real.

79 ADA: When he told you about this plan, I assume that he offered to share the spoils with his
80 coconspirators, correct?

81 MG: Yes he did, but the OCTF plan was for everyone to be arrested and the money seized as
82 we exited the parlor.

83 ADA: I understand, but the OCTF agents were nowhere near the ATB parlor on 76th Street
84 when Tomassi walked out with the money, were they?

85 MG: Unfortunately, Captain Kowalski misread my note and Tomassi and Kyser Sosay got
86 away.

87 ADA: We'll talk about your note in a little bit, but getting back to my question, how much was
88 your cut supposed to be?

89 MG: According to Tomassi, the total, as told to him by Luther Bybel, was around \$5.5 million.
90 The split was two million for Tomassi and a million each for Sosay, Zyrga, and myself. If
91 we got more, we'd all spend it together.

92 ADA: Certainly more than enough to pay off all your bills, wouldn't you agree?

93 MG: If you think I would jeopardize my career for a million dollars or for any amount of
94 money for that matter, you couldn't be more wrong. You seem to be laboring under the
95 false assumption that I was really in on this thing when, in fact, I kept my superiors at
96 the OCTF informed of what was happening with Tomassi right from the day he asked me
97 to come to work for him right up until an hour before the strike went down on July 14th.
98 Besides, if I was in on this crime, where would I go with the whole world knowing that I
99 got a million dollars in a heist that resulted in the death of two people? It's ludicrous to
100 even think that I was involved in any way other than an undercover agent doing my job.

101 ADA: Well, where did Tomassi and Sosay go?

102 MG: I assume they crossed the river and drove to Toronto. After that, it's anybody's guess.
103 All Tomassi said was that he was heading to some tropical island somewhere.

104 ADA: And what about Sosay and Zyrge?

105 MG: All I know is that after the money was divided, everyone was to go their separate ways.
106 The less we knew about each other's plans, the better.

107 ADA: What did you tell them your plans were?

108 MG: I didn't say anything. As I said, the less we knew about each other's plans the better. If I
109 had pressed Tomassi about his ultimate destination, I think he would have gotten
110 suspicious of me.

111 ADA: Let's talk about your relationship with Tomassi. Your family and his family were quite
112 close, were you not?

113 MG: Well, my father and his father both grew up on the east side. Before Zeppo Tomassi
114 bought his tavern in the late 1960's my father and he worked together at the Buffalo-
115 Niagara steel plant. After that, my father was a regular at Zeppo's.

116 ADA: By regular, you mean a frequent customer?

117 MG: Yes.

118 ADA: Did that include gambling?

119 MG: My father placed his fair share of bets there on football and basketball games over the
120 years.

121 ADA: In fact, he was frequently in debt on account of his gambling, isn't that true?

122 MG: Let's just say he did not die a wealthy man. At least he kept the house.

123 ADA: And your brother Ziggy was very close to Tomassi wasn't he?

124 MG: Yes. Ziggy and Tomassi went to grammar school together at Saint Casimir's and they
125 both attended high school at Saint Stanislaus where Tomassi was the star quarterback
126 and Ziggy was his left tackle. Tomassi was "All Buffalo-Niagara" and was being hotly
127 recruited by several top tier colleges until he wrecked his knee in his senior year in 1988.
128 It was the last game of the season and he got blindsided playing lacrosse. His father had
129 always told him that playing lacrosse could jeopardize his football career and it turned
130 out he was right. But Rolo wanted to letter in three varsity sports. He could have gone
131 on to be a college star, maybe even gone pro, if not for the injury. Instead he stayed
132 home and went to work for his father at the tavern.

133 ADA: And Ziggy, what about him?

134 MG: He followed Tomassi and went to work for him.

135 ADA: Now, when your brother and Tomassi were seniors at Saint Stan's, you were a
136 freshman, were you not?

137 MG: Yes.

138 ADA: And you were one of the managers of the football team?

139 MG: True.

140 ADA: Fair to say you looked up to Rolo and Ziggy?

141 MG: I don't know if I'd go that far, but Ziggy was my big brother and he was the left tackle for
142 the best football team in the entire Buffalo-Niagara region. And Tomassi, well, he was
143 the star quarterback. He had so much potential but that knee injury ended it all. After
144 that, unfortunately, he followed in his father's footsteps.

145 ADA: And so did your brother, didn't he?

146 MG: Well, let's just say that except when he was playing football, Ziggy was always behind
147 Rolo, and wherever Rolo went, Ziggy followed.

148 ADA: Despite your father's gambling problems and Ziggy's involvement with Tomassi, you
149 went in an entirely different direction didn't you?

150 MG: That's true. I saw what happened to my father. Even though he made a decent living
151 and had a good pension, he pretty much frittered it all away betting on sports. It broke
152 our late mother's heart, never really being able to afford the things she wanted. She
153 really held that against him. I guess that's why I was so easy going with my wife's
154 extravagances. As for Ziggy, he was always a good-hearted guy, but not the brightest
155 person in the world. His options were limited. And you know what happened to him.

156 ADA: So how did you get involved in law enforcement?

157 MG: When I was a senior in high school in 1988, I knew that I wanted to go away to college
158 and get a degree. I got a scholarship to Northwestern and got a dual degree in Criminal
159 Justice and Sociology. After graduating from college in 1993, I joined the Marines and
160 served in the Middle East. After being discharged from the Marines with a Bronze Star, I
161 applied and was accepted into the FBI Academy in Quantico Virginia in 1996.

162 ADA: Where were you assigned after you became a special agent?

163 MG: I knew they wouldn't assign me to my hometown so I put in for Chicago since I had gone
164 to school there and met Denise there as well.

165 ADA: What type of work did you do in Chicago?

166 MG: After several months of narcotics investigations, I was assigned to the Bureau's
167 Organized Crime Division because there was a strong Eastern European organized crime

168 presence in the Chicago area in the late 2000's and I was fluent in Russian. I went deep
169 undercover and was able to infiltrate the EEOC (Eastern European Organized Crime)
170 syndicate, which led to indictments and convictions of several EEOC kingpins on RICO,
171 Conspiracy, Racketeering and other felony charges.

172 ADA: How did you end up back in Buffalo-Niagara?

173 MG: As a result of my work in the EEOC cases, I received a great offer to take on a
174 supervisory position in the Washington, DC organized crime bureau, but my father took
175 ill in 2012, so I put in for a transfer back home. My request was granted in 2014.

176 ADA: How did you come to work for the OCTF under Captain Kowalski?

177 MG: Shortly after my brother got indicted on Assault and Weapons charges, I got a call from
178 my superior that I was being transferred to the OCTF under Captain Kowalski. When I
179 got there, he informed me that he had been after Rolo Tomassi for years and that I
180 could be instrumental in helping the OCTF bring him down if I could persuade Ziggy to
181 testify against Tomassi in exchange for a favorable sentence consideration.

182 ADA: How did you respond?

183 MG: To be honest, I felt very uncomfortable seeing how Ziggy is my brother and Rolo
184 Tomassi is his best friend. Plus, as you pointed out earlier, I looked up to these guys
185 growing up. But I also realized that Ziggy was facing serious time in jail and I wanted to
186 do whatever I could, legally speaking, to help him. So I agreed to sit down with him and
187 layout his options as I saw them.

188 ADA: What did you tell him?

189 MG: I said: "I know that you and Rolo go way back, but now you've got to do what is best for
190 you." I told him that the OCTF was looking to make an example of him if he didn't play
191 ball. I remember Captain Kowalski was almost maniacal in telling me how important it
192 was to him personally to get Ziggy to flip on Tomassi. I also told him that our father was
193 so distraught over the whole situation that he seemed to be throwing in the towel.

194 ADA: How did your brother respond to that?

195 MG: At first, he cried and then he said that he'd rather rot in jail than rat on his best friend.
196 He then instructed me to convey a certain message to Captain Kowalski in reference to
197 what he could do to himself. He then asked me to give his love to our father and
198 promise to look after him as he had done. As I left him, he said: "family first, little
199 brother".

200 ADA: What does that mean to you, "family first"?

201 MG: It's our family motto, something our parents taught us. It means that family is the most
202 important thing in the world and that family must be your first consideration above
203 everyone and everything else.

204 ADA: And I take it that's something you believe as you sit here now?

205 MG: Of course I do.

206 ADA: After your brother was convicted, he got 15 years in prison, didn't he?

207 MG: Yes, he did.

208 ADA: Do you believe that Ziggy's situation caused your father to take his own life?

209 MG: It's hard for me to think otherwise.

210 ADA: I'm now showing you Grand Jury Exhibit Three. This is your father's suicide note, is it
211 not?

212 MG: (Pausing to wipe away tears) Yes, it is.

213 ADA: It says, "The pain over what has happened to Zygmunt is more than I can take. I cannot
214 go on fighting the cancer knowing that my oldest son is rotting in jail. Forgive me. Your
215 loving father."

216 MG: Pretty much speaks for itself, doesn't it?

217 ADA: So, you were angry about your brother?

218 MG: Yes.

219 ADA: And you were obviously upset if not devastated by what happened to your father?

220 MG: Of course I was.

221 ADA: Bottom line, you blame Captain Kowalski for what happened to both of them?

222 MG: I'll say this. People are ultimately responsible for their own actions. Ziggy chose a life of
223 crime. He got caught and convicted and he's now paying the price in spades. My father
224 chose to take his own life by overdosing on pain pills. As painful as that all is, that's what
225 happened. But to answer your question, I'd have to say that Captain Kowalski pushed
226 the first domino, so to speak.

227 ADA: Isn't it true that your brother told you that he felt your father killed himself because he
228 was in jail?

229 MG: Something like that.

230 ADA: And Ziggy told you that "somebody's gotta pay" for what happened to him and your
231 father, didn't he?

232 MG: He did say that, but we were talking about paying for the costs of the funeral, which
233 were upwards of ten thousand dollars.

234 ADA: Your father had a pension, didn't he?

235 MG: Yes, but he had no will and he set no money aside for his burial expenses. Plus, what he
236 did have he squandered on gambling until he got too sick to get around.

237 ADA: So you claim that you and Ziggy were talking about covering funeral expenses and not
238 making Captain Kowalski pay for what he did to your family?

239 MG: Absolutely.

240 ADA: Let's talk about Matty Walker for a few minutes.

241 MG: I somehow knew that name was going to come up.

242 ADA: Did you know Ms. Walker?

243 MG: You already know the answer. Yes, I knew Matty Walker.

244 ADA: How did you come to know Ms. Walker?

245 MG: I met her when I was working in Chicago. She had been missing for several days, and I
246 was assigned to work on the case. She showed up at her parents' home when I was
247 there interviewing them. At the time she said that she had taken a long weekend and
248 didn't think that it was necessary for her to let anyone know.

249 ADA: Did you develop a relationship?

250 MG: Yes. She eventually moved in with me.

251 ADA: How long did that last?

252 MG: Well, she moved in with me shortly after I separated from Marla in 2013, and we stayed
253 together when I moved back to Buffalo-Niagara.

254 ADA: What about marriage?

255 MG: We talked about marriage, but she was reluctant to marry because of my job.

256 ADA: Explain.

257 MG: She didn't want a dead husband. She also didn't think that I could afford to raise a new
258 family as long as I had to pay for Tammy Fae.

259 ADA: Did that strain the relationship?

260 MG: Yes. I had to promise that I would find some resolution to the problem by the end of
261 2018.

262 ADA: What sort of resolution?

263 MG: I don't know. Get a safer, better paying job, I guess.

264 ADA: Do you know where she is now?

265 MG: I'm afraid that I don't.

266 ADA: Are you aware that she was at the Widener International Airport on July 13, 2018?

267 MG: I didn't know it at the time. I found out later.

268 ADA: Did you plan to meet her there after the heist?

269 MG: No, of course not.

270 ADA: But she was there and, according to the records, she boarded a flight to Nicaragua. She
271 was accompanied by a man.

272 MG: Yes, and I haven't heard from her since.

273 ADA: Her ticket was in her name. The man's ticket was in your name. Were you planning on
274 going to Nicaragua with her after the heist?

275 MG: No.

276 ADA: Of course, if the two of you had moved to Nicaragua, her concerns about your job and
277 your monetary commitments to Tammy would have vanished.

278 MG: Yeah, but we'd be stuck in Nicaragua. There are easier ways to resolve those problems.

279 ADA: Did she know about the plan to rob the OTB?

280 MG: No. That's nothing that I talked about at home.

281 ADA: Did she know Rolo Tomassi?

282 MG: Yeah, I introduced them shortly after I started working undercover.

283 ADA: Did she come to any of the planning meetings for the heist?

284 MG: No. I told you, I didn't let her know anything about the heist.

285 ADA: But she visited Rolo when you weren't there.

286 MG: That's a lie. Matty loved me. She wouldn't hang around with Rolo behind my back.

287 ADA: I'm showing you a picture marked Exhibit "A". Do you recognize the man in this picture?

288 MG: Yeah, that's Rolo.

289 ADA: And the woman?

290 MG: That's Matty. So what. They went to the beach. Big deal. Doesn't mean a thing.

291 ADA: Let's talk about how you came to work undercover with Tomassi. Whose idea was it for
292 you to try and get in with Rolo Tomassi after your father's unfortunate death?

293 MG: Well, the opportunity just kind of presented itself one night while I was having a beer
294 and watching Monday Night Football at Zeppo's Tavern.

295 ADA: Why on earth would you, as law enforcement agent, set foot in that place?

296 MG: For one thing, I was off duty. For another, I grew up in that neighborhood and Zeppo's
297 has always been a popular watering hole. Plus, Rolo Tomassi approached me at the
298 funeral and suggested that I stop by some time to catch up on old times, so I took him
299 up on his offer. By the way, I had informed Captain Kowalski of Tomassi's invitation and
300 when he heard that, he lit up like a Christmas tree.

301 ADA: So how did the opportunity present itself?

302 MG: As I was sitting at the bar talking to Tomassi, this guy who said he was Wally Kantorski's
303 son staggers up to us and starts in on Tomassi about the beating his father took for not
304 paying off his gambling debts. He kept saying, "Why didn't you call me, I would have
305 taken care of it." Then all of a sudden he pulls out a knife and lunges at Tomassi.
306 Fortunately, the guy was drunk, off balance and not very agile, so I was able to grab his
307 forearm and twist his hand behind his back. I quickly hustled him outside and said:
308 "What the hell is wrong with you, man, are you out of your mind?" The guy started
309 crying and I put him in my car and drove him home. I told him to stay the heck away
310 from Tomassi if he wanted to stay in one piece.

311 ADA: What did you do then?

312 MG: I returned to Zeppo's to check in on Rolo. He was physically unhurt but still a bit shaken
313 up. He invited me into the backroom and thanked me for saving his life. He then pulled
314 out a bottle of vodka from his desk drawer and poured us a couple of shots. We started
315 reminiscing about the old days and several shots later, after commiserating about my
316 brother and father, he half-seriously suggested that I fake over Ziggy's spot in the
317 business.

318 ADA: How did you respond?

319 MG: I laughed and said that I had this little problem with a job in law enforcement. Then he
320 said: "It's perfect, you tell your bosses that you're working undercover and that you
321 convinced me that you want to pay them back for what they did to your family." I had to
322 admit to myself that he had a point, but I also realized that he was a criminal and that
323 this would be a perfect opportunity to get in on the inside and help the OCTF finally
324 make a case against Tomassi.

325 ADA: And you weren't the least bit conflicted about doing this given your family's history with
326 Tomassi?

327 MG: Of course I was conflicted. I was also upset about being asked to put the heat on my
328 brother and I was devastated by what happened to my father. But I had taken an oath
329 to uphold the law and I knew that Tomassi was a criminal who needed to be taken down
330 and I was in a position to help make that happen.

331 ADA: So what did you do?

332 MG: I informed Captain Kowalski and it was like the clouds had parted. He instructed me to
333 tell Tomassi that I was all in and that I would be ready, willing, and able to oversee his
334 collections operation.

335 ADA: Did Captain Kowalski express any reservations or concerns about your allegiances or
336 ability to go undercover against a longtime family friend?

337 MG: If he did, he never said a word to me about it. I think he was so thrilled over the
338 prospect of finally getting close to Tomassi that he didn't want to discourage me in any
339 way.

340 ADA: How did Tomassi respond to your willingness to accept his offer?

341 MG: He also seemed thrilled but he was also very cautious. When I told him I was in, he had
342 two of his top men, Kyser Sosay and Lyman Zyrga, frisk me like a teenager in the back
343 seat of a car at a drive-in movie. He apologized and said that he needed to make sure
344 that my heart was in the right place. He then said that he had a collection matter that
345 required my immediate attention.

346 ADA: Tell us about that.

347 MG: He explained that one Chester Krupczyk, whom he described as a "horse-ball from way
348 back," was long overdue on a \$5,000.00 debt that he owed. Tomassi instructed me to
349 pay Mr. Krupczyk a visit and "make an impression" on him. He told me that he was a
350 regular at the ATB Parlor on 76th Street on the eastside of Buffalo-Niagara. Tomassi also
351 mentioned that Lyman Zyrga would accompany me on this assignment.

352 ADA: So what happened?

353 MG: A few days later, Zyrga drove me in his Towne Car over to the ATB Parlor at 99 76th
354 Street and sure enough, Chester was there. We waited for a while until he came out and
355 started walking toward his vehicle. Before I exited our vehicle, Zyrga put his hand on my
356 chest. I said: "Lyman, I didn't think you cared", and he said: "just making sure wiseass".

357 ADA: What did you do then?

358 MG: I exited the vehicle and walked up behind Krupczyk. I grabbed him firmly by the arm and
359 said: "Walk with me." Zyrga was following closely behind me. I escorted Krupczyk to an
360 alleyway between two garages and I knew I had to be convincing with Zyrga looking
361 over my shoulder. So I pushed him up against the garage wall and put the muzzle of my
362 .38 in his mouth and said: "Mr. Tomassi tells me you owe him five grand. If it's not paid
363 in three days, the next time I pull the trigger."

364 ADA: How did Krupczyk respond?

365 MG: After I pulled the gun out of his mouth, the poor guy started bawling and dry-heaving.
366 He fell to his knees and said: "I swear I'll take care of it. Please don't hurt me, I got a
367 family."

368 ADA: What happened after that?

369 MG: Zyriga and I returned to his car. As we drove back to Zeppo's, Zyriga started laughing and
370 said: "I hope that bastard had a clean pair of shorts in his car".

371 ADA: What, if any, arrangements did you make with the OCTF about payment of Krupczyk's
372 debt?

373 MG: Well, I figured that Krupczyk wouldn't be able to come up with that kind of money in so
374 short a time and I also knew that if the money wasn't paid, I would be the one who
375 would have to "make him pay" for not paying, if you know what I mean. So Captain
376 Kowalski authorized the release of \$5,000.00 in cash from the OCTF's asset forfeiture
377 fund. I then took the money to Tomassi and told him that Krupczyk was now squared
378 up.

379 ADA: Did you tell Tomassi that you paid off Krupczyk's debt with OCTF funds?

380 MG: Of course not. I was working for the OCTF, not Tomassi. Besides, I knew that Tomassi
381 wouldn't let Krupczyk off the hook without paying off his own debt.

382 ADA: Did you ever tell Krupczyk that his debt had been paid?

383 MG: I never got the chance. Unfortunately, he disappeared for a while and just happened to
384 resurface at the time and place of the OTB theft on July 13, 2018.

385 ADA: All right, let's talk about that OTB theft. As I understand, Tomassi came up with the idea
386 to "rob" the OTB?

387 MG: Yes. In June, 2013, he explained to me that there was this manager at the 19th Street
388 OTB Parlor, Luther Bybel, who owed him hundreds of thousands of dollars. Bybel was
389 not able to repay the debt, but told Tomassi that he could make the money "available
390 for the taking" from the OTB Parlor. Bybel said that if Tomassi made it look like a
391 robbery, he would come off as an innocent victim rather than an inside thief.

392 ADA: How did Tomassi say he responded to that offer?

393 MG: Tomassi said he agreed but told us that we weren't going in simply to recoup what Bybel
394 owed. Tomassi went on to explain that he had recently been to the doctor who
395 informed him that he had developed Type 2 diabetes, the same medical condition that
396 had killed his father. He said: "I'm in for one big strike and it's off to the tropics for me".

397 ADA: Who was present when he made this statement?

398 MG: Well, I was, along with Lyman Zyriga and Kyser Sosay.

399 ADA: How did Zyriga and Sosay respond?

400 MG: They were stunned. They said: "What's going to happen to us?" Tomassi said: "After we
401 make this strike, you'll each get a million dollars to help you figure out what to do with
402 the rest of your lives. As for me, I'm getting out of Dodge."

403 ADA: So, what was the plan for this heist?

404 MG: Tomassi explained that we, meaning Kyser Sosay, Lyman Zyrga, and I would drive to the
405 OTB Parlor at 111 19th Street on Friday, July 13 at 4:35 p.m. Bybel had told Tomassi that
406 his clerk, Barbara, left every Friday at 4:30 p.m. to take her mother out for a fish fry. So,
407 Bybel would be the only employee in the parlor at that time. We would go in, Tomassi
408 would escort Bybel at gun point to the vault in the back room while Zyrga and I kept an
409 eye on any customers who might be in the scene. Tomassi said that he would knock
410 Bybel out to make it look like a robbery. After he got the money and put it in a duffel
411 bag, he'd walk out, we would follow and then we'd all join Sosay who would be waiting
412 down the block in his Towne Car. We would then drive to the Painted Bird Marina
413 where we'd split up the money. Tomassi's friend Jerry Kosinsky would then take us
414 across the Buffalo-Niagara river in his boat, "Jerry's Girl", and we'd then take a car from
415 Fort Erie to Toronto. After that, we'd split up and go our own ways.

416 ADA: Did you share this information with Captain Kowalski?

417 MG: Of course I did, chapter and verse.

418 ADA: What was the OCTF's counter plan?

419 MG: We all agreed that we wanted to catch Tomassi and his crew after the theft was
420 complete. So our plan was that OCTF agents would be stationed at various locations in
421 adjoining and nearby stores, in cars and posing as civilians on the street. The SWAT team
422 would be positioned on rooftops across the street. As soon as we emerged from the
423 parlor, a team of agents would come down on us while others would surround Sosay in
424 the getaway vehicle.

425 ADA: What was the plan if they got away?

426 MG: We had agents in place at the Painted Bird, but we didn't expect anyone to get that far.

427 ADA: Were you wired for this crime?

428 MG: No. Captain Kowalski broached the idea with me and I said: "Look, we're this close to
429 taking down Tomassi. If he frisks me again and finds a wire, everything you've been
430 working for all these years goes out the window and I go to an early grave".

431 ADA: Directing your attention to the morning of July 13, 2018, where were you and what was
432 going on?

433 MG: The four of us were all hanging out in the back office of Zeppo's. At about 9:00 a.m.,
434 Tomassi got a call on his cell phone from Bybel. I heard Tomassi say, "You've got to be
435 kidding, what do we do now"? After several minutes of conversation, Tomassi hung up

436 and said: "Change of plans." He explained that Bybel had gotten a call from the OTB
437 personnel department that the manager of the OTB branch on 76th Street had called in
438 sick that morning and that he would have to fill in at that location. He said this actually
439 would look better for him because it would look less like an inside job at a branch that
440 he was asked to cover unexpectedly at the last minute. He said: "Money's money,
441 right?" So Tomassi said: "Same plan, different location."

442 ADA: So I imagine you took it upon yourself to notify Captain Kowalski immediately of this
443 unexpected change in circumstances?

444 MG: If only it was that simple. First of all, Tomassi was unusually jumpy. He said he wanted us
445 all together until it was time to head over to do the job.

446 ADA: Didn't you have a cell phone on you?

447 MG: Yes.

448 ADA: You could have slipped away for a moment and made a quick call or left a message
449 couldn't you?

450 MG: Once again, given how nervous Tomassi was acting, I didn't want to do anything that
451 would arouse his suspicion and scuttle the plan.

452 ADA: You said earlier that Tomassi had suggested that you lead the OCTF to believe that you
453 had gotten in undercover with him. So what did you tell him you were telling your
454 superiors at OCTF?

455 MG: I simply told him to let me worry about that part and he accepted that. As far as the OTB
456 job went, I told him that if things went as we had planned, the less the OCTF knew the
457 better because if Bybel kept his mouth shut, no one would be the wiser.

458 ADA: So what did you do to get word to Captain Kowalski about the change of plans?

459 MG: After lunch, I told Tomassi that I was really concerned about Bybel's last-minute change
460 of plans. I said it was a little suspicious that on the very day the theft is supposed to go
461 down, he just happens to be called to another location. I said I wanted to go over there
462 ahead of time just to make sure that Bybel was there and everything was on the up and
463 up.

464 ADA: How did Tomassi respond?

465 MG: He said: "All right, but get back here ASAP."

466 ADA: So what did you do?

467 MG: I drove by the OTB parlor on 76th Street and observed Bybel inside through the window.
468 Then I was about to call Captain Kowalski on my cell phone when I realized that I had
469 left the phone in Tomassi's office. So I drove over to the OCTF office. It was around 3:45
470 p.m. and I was concerned about the time so I ran over to Captain Kowalski's office. He

471 was not at his desk, and his secretary was nowhere in sight. In fact, nobody was around
472 that I could see. I didn't want to keep Tomassi waiting any longer so I wrote out his note
473 in a hurry, stuffed it in an envelope marked "urgent" to Captain Kowalski and left it on
474 his desk. I then ran out and hustled it back over to Zeppo's.

475 ADA: I'm showing you Grand Jury Exhibit One, that's the envelope you left on Captain
476 Kowalski's desk, isn't it?

477 MG: That's correct.

478 ADA: And that's your handwriting on the envelope?

479 MG: Yes.

480 ADA: To be more precise, you printed the words "CAPTAIN KOWALSKI" and "URGENT"?

481 MG: Correct.

482 ADA: And you would agree that you made a point of printing these words legibly, true?

483 MG: I don't know that I consciously thought about that but yes, the letters are printed and
484 they are legible.

485 ADA: No mistaking what it says, is there?

486 MG: Not as far as I'm concerned, no.

487 ADA: And again, you were in a hurry?

488 MG: That's what I said.

489 ADA: Now, turning your attention to Grand Jury Exhibit Two, that's the note you wrote to
490 Captain Kowalski, isn't it?

491 MG: Yes, it is.

492 ADA: And unlike the envelope, you did not print the message on the note but instead you
493 wrote it, didn't you?

494 MG: Yes. Now that I look at it yes, I did write it out.

495 ADA: And do you contend that this is a true and accurate representation of your handwriting?

496 MG: Keeping in mind that I dashed it off in a hurry, yes, that's what my writing looks like.

497 ADA: And this first word is what?

498 MG: It's an acronym for "change of plans".

499 ADA: So that's not an abbreviation for "captain"?

500 MG: No. The abbreviation for "captain" is "c", "a", "p", "t", period.

501 ADA: And do you claim that "COP" is a common abbreviation for "change of plans"?

502 MG: I don't know how common it is but that is what I intended.

503 ADA: And you felt that Captain Kowalski would interpret that the same way?

504 MG: I assumed that he would.

505 ADA: You could have simply written out the words, "change of plans", couldn't you?

506 MG: I suppose so, yes, but I was pressed for time, so I didn't give it much thought.

507 ADA: You would agree, wouldn't you, that this was a very important message?

508 MG: Of course.

509 ADA: I mean, you were supposedly advising your superior office of a last-minute change of
510 plans on a big heist involving major organized crime figures, weren't you?

511 MG: Yes.

512 ADA: Under the circumstances, it was important to be crystal clear, wasn't it?

513 MG: Yes.

514 ADA: The success of the OCTF's efforts in counteracting this crime depended on Captain
515 Kowalski understanding your message, didn't it?

516 MG: And responding appropriately, yes.

517 ADA: And by "appropriately", you mean going to the correct location and intercepting all of
518 you as you exited the OTB parlor, hopefully without violence or bloodshed?

519 MG: Yes, that's true.

520 ADA: By the way, you didn't put a period after each of the letters, "COP", did you?

521 MG: No, I did not.

522 ADA: And you claim that the second letter is an "o" and not an "a"?

523 MG: Correct.

524 ADA: I see. Now, the first line of the message reads, "Strike now". Wouldn't you agree that
525 the phrase "strike now" means "attack or respond immediately" as opposed to later?

526 MG: I suppose it could mean that in a certain context, but that's not how I intended it. What I
527 meant was that our OTB strike is now at a different location.

528 ADA: But you didn't say that, did you?

529 MG: I did, but in truncated or telegraphic language.

530 ADA: Don't you mean, "telepathic"?

531 MG: I beg your pardon?

532 ADA: Well, did you really expect Captain Kowalski to understand that the "strike", whatever
533 that means, "is" now someplace else when all you wrote was "strike now"?

534 MG: In hindsight, I guess I could have been more clear by inserting "is" between "strike" and
535 "now" but, again, I was in a hurry to get back before Tomassi got suspicious and either
536 called it all off or got violent. And the word "strike" in my experience both in the military
537 and in law enforcement means a coordinated hit by a group of people, in this case, by
538 Tomassi and his crew.

539 ADA: But can't you understand how Captain Kowalski could have interpreted your instructions
540 as meaning that the OCTF should take action sooner than later?

541 MG: Viewing these two words in isolation, perhaps yes. But you have to read the entire
542 message, which says, "strike now at 76th Street branch!"

543 ADA: Wait a minute. Are you saying that the number representing the OTB address is a 76?

544 MG: Yes, I am.

545 ADA: Now, the original location was the OTB branch at 111 19th Street, correct?

546 MG: Yes.

547 ADA: Are you telling us that the location just happened to be changed that very day to the
548 branch at 99 76th Street?

549 MG: Didn't we already talk about this? It didn't "just happen" to be changed. Luther Bybel
550 called that morning and informed Tomassi that he had to cover the 76th Street branch
551 because the manager there had called in sick.

552 ADA: Quite a coincidence, wouldn't you say?

553 MG: Call it what you will, I'm not quite sure how it's a coincidence.

554 ADA: Anyway, so by this note, you're telling us that you were informing Captain Kowalski that
555 the OTB strike by Tomassi and company was now going to take place at the 76th Street
556 branch?

557 MG: Yes.

558 ADA: Pretty significant change of plans, wouldn't you agree?

559 MG: Of course.

560 ADA: It was critical that you conveyed that information not only as soon as possible but in
561 clear and unambiguous terms, correct?

562 MG: As for the timing, I informed the Captain as soon as I could.

563 ADA: Well, you didn't call him on your cell from Zeppo's right after Tomassi informed you of
564 Bybel's message, did you?

565 MG: I couldn't. After the call, we had a long meeting and Tomassi was very nervous. I didn't
566 want to take the chance.

567 ADA: And is it your testimony that the number I'm now pointing to is a 76?

568 MG: Yes.

569 ADA: Do you think this is clear and unambiguous?

570 MG: To my eyes, yes, but again, I was writing in a hurry, almost scribbling.

571 ADA: But the printing on the envelope is hardly scribbled, is it?

572 MG: Again, after I wrote the note and put it in the envelope, I wanted to envelope to catch
573 the captain's eye so that he got the message and read it immediately.

574 ADA: Can you understand how the captain could have interpreted this number as a 19?

575 MG: Possibly, I guess, but what you say is a one, to me, is clearly a seven and the second
576 number is a six and not a nine. Furthermore, I wasn't aware that poor penmanship was
577 a crime.

578 ADA: Mr. Grabelsky, isn't it a fact that you all knew weeks before July 13th that Bybel would
579 be at the 76th Street branch on that day and that you concocted this last-minute
580 "change of plans" story to cover your tracks?

581 MG: No.

582 ADA: Isn't it a fact that you were present with Lyman Zyrga and Kyser Sosay in the latter part
583 of June when Tomassi informed you all that Bybel would be covering for the 76th Street
584 manager who had plans to be out of town on July 13th?

585 MG: I don't know what you're talking about. The first time Tomassi mentioned 76th Street
586 was on the morning of July 13th.

587 ADA: Let's talk now about what happened inside the OTB on 76th Street. When you entered,
588 you noticed that Chester Krupczyk was there, didn't you?

589 MG: Yes.

590 ADA: Didn't it occur to you that if you paid off his debt without telling him, the debt might be
591 paid twice if he came up with the money?

592 MG: Well, we never got the chance to tell Krupczyk because he disappeared and I seriously
593 doubted that he could have been able to come up with that kind of money anyway
594 unless he hit the jackpot which, to my knowledge, he never did. But as luck would have

595 it, the day he decided to resurface is the same day we walked into that OTB parlor
596 where he was at the window placing a bet.

597 ADA: Another curious coincidence?

598 MG: It is what it is.

599 ADA: So what happened when you all walked in?

600 MG: Krupczyk looked at me and must have thought I was after him again because he got all
601 upset and said: "Please, don't hurt me. I swear I'll have the money in just a few more
602 days", at which point Zyrga said: "What the hell is he talking about"?

603 ADA: And what did you say?

604 MG: I said: "I have no idea", whereupon I walked up to Krupczyk, put my gun in his face and
605 said: "One more word and this time I will pull the trigger".

606 ADA: Where was Tomassi while this was taking place?

607 MG: He had met Bybel at the window and they walked into the back room.

608 ADA: What were you doing in the meantime?

609 MG: I stood next to Krupczyk with my gun in his ribs while Zyrga stood between me and the
610 backroom. He kept looking at me with this quizzical expression on his face.

611 ADA: Did Tomassi eventually return from the back room?

612 MG: Yes. He came out with a large duffle bag strapped over his shoulder. It was obviously
613 full. He walked out very quickly and said: "Let's go". As he passed by Krupczyk, he pulled
614 out his handgun and very matter-of-factly shot him in the abdomen, saying, "No
615 witnesses".

616 ADA: What did you do?

617 MG: I was in shock because in our discussions about the theft, Tomassi made it very clear
618 that it would be "in and out" without any violence or drama. So, realizing that there
619 were two of them and one of me, I figured we'd all walk out into a swarm of OCTF
620 agents. Unfortunately, no one was there.

621 ADA: That's because they had gone to the branch on 19th Street, isn't it?

622 MG: Yes.

623 ADA: And you still claim that the address you wrote in Grand Jury Exhibit Two is a 76 and not
624 a 19?

625 MG: Yes.

626 ADA: Yes another strange coincidence?

627 MG: You certainly use the word "coincidence" differently than I do, but I am sorry that
628 Captain Kowalski misread my note.

629 ADA: So after Tomassi exited, you followed him?

630 MG: Yes.

631 ADA: But you didn't draw your gun at him and say, "Stop, police"? I mean he just shot a man
632 right in front of you.

633 MG: The problem was that Zyrga was behind me with a gun. If I drew my gun on Tomassi,
634 Zyrga would have shot me in the back. In fact, when I heard the shot, I figured it was all
635 over. Instead, I turned around and there was Zyrga on the sidewalk with a bullet wound
636 in his backside.

637 ADA: Where was Tomassi at this point?

638 MG: He got into Sosay's car and they took off like thieves in the night.

639 ADA: What about Krupczyk?

640 MG: He was lying on the floor of the OTB barely conscious with a gun in his hand.

641 ADA: What did you do?

642 MG: I re-entered the parlor with my gun drawn and said: "Don't shoot, I'm a cop". Then I ran
643 up to him, removed his handgun and said: "Man, I am so sorry, hang on, help is on the
644 way".

645 ADA: Did he say anything?

646 MG: He said: "I figured it was only a matter of time before you guys found me, so I got a
647 gun". He then said: "Tell my wife I love her and I'm sorry for gambling our life away". He
648 then fell unconscious and, unfortunately, he never came to.

649 ADA: What happened then?

650 MG: I ran back outside to deal with Zyrga but by the time I came out, Captain Kowalski and
651 his crew had surrounded him and secured his weapon.

652 ADA: What did Captain Kowalski say?

653 MG: The first thing he said was, "Where's Tomassi?" I pointed down the street and said that
654 he and Sosay had taken off in a black Towne Car a few minutes earlier. I then told him
655 that Chester Krupczyk of all people was inside shot and bleeding and that Bybel was
656 somewhere in the back room.

657 ADA: How did he respond?

658 MG: He directed his crew to go inside. Krupczyk, as it turned out, was dead. Shortly after that
659 several officers came out and said: "Captain, you've got to see this". Captain Kowalski

660 headed inside and I started to follow and he said: "No, you stay here". He then directed
661 other officers to take my weapon and keep me under guard.

662 ADA: What happened next?

663 MG: A few minutes later, Captain Kowalski came out and said: "We've got a double
664 homicide". He then turned to me with a look that could kill and said: "What the F***
665 just happened here", and "Why the f*** were you here on 76th Street while we were at
666 the 19th Street branch?

667 ADA: How did you respond?

668 MG: I was incredulous. I said: "What are you talking about? I told you in my note that the
669 location had been changed. Didn't you read it"?

670 ADA: What did he say?

671 MG: He said: "I read it all right. I did exactly what you told me to do and look what
672 happened". He then said: "It's all over". He turned to me and said: "I should have known
673 better. You're going to pay for what you did to me". He then saw that Zyriga was being
674 lifted onto the gurney and said to the ambulance crew, "You'd better make sure he
675 stays alive".

676 ADA: What happened then?

677 MG: I was escorted back to headquarters and while I wasn't put in a jail cell, it was clear that
678 I wasn't free to leave. Sometime after midnight the next morning, Captain Kowalski
679 escorted me into our conference room where he started interrogating me like a suspect.
680 Finally, I got tired of all the accusations and asked for a lawyer.

681 ADA: What happened then?

682 MG: Captain Kowalski said: "This isn't over by a long shot". I said: "Unless you plan to charge
683 me with something, I'm out of here." He then said: "Get out of my sight", at which point
684 I got up and went home.

685 ADA: How did the investigation proceed from that point forward?

686 MG: A few days later, I appeared in court expecting to testify against Lyman Zyriga at the
687 preliminary hearing but as soon as I saw the assistant D.A. and defense counsel huddling
688 at the bench I figured something was up. Next thing I know, Zyriga waives the hearing
689 and is escorted out of the courtroom. I heard the D.A. say to Zyriga's lawyer "I'll see you
690 and your client in my office". I knew then that Zyriga had cut a deal to make up a story
691 against me.

692 ADA: Agent Grabelsky, do you find it at all strange that Tomassi and Sosay never went to the
693 Painted Bird Marina if, in fact, that was the plan?

694 MG: That was the plan. All I can say is that Tomassi probably figured that things weren't right
695 with me when Krupczyk started carrying on about not paying off his debt.

696 ADA: Didn't you say that Tomassi was in the back room at that point?

697 MG: He and Bybel were heading that way but I wasn't paying close attention to them when
698 Krupczyk started talking.

699 ADA: Mr. Grabelsky, you've been in law enforcement for many years, true?

700 MG: Yes.

701 ADA: If you had to make a choice between doing something illegal for your family or doing
702 what the law required even if it hurts your family, I take it, you would break the law for
703 your family, wouldn't you?

704 MG: Absolutely not. Family or not, I swore to uphold and enforce the law when I became an
705 FBI agent.

706 ADA: True. And showing you again, Grand Jury Exhibit Three, your father's suicide note, would
707 you please read the post script?

708 MG: It says, "As your mother and I taught you as a boy, "family first"."

709 ADA: Thank you. I have no further questions.

1 **GRAND JURY TESTIMONY OF LYMAN ZYRGA**

2 **August 9, 2018**

3 The witness first being duly sworn:

4 Assistant District Attorney (ADA): Mr. Zyrga, do you swear before this Grand Jury and in the
5 presence of your attorney to waive immunity from prosecution in this investigation into
6 the deaths of Chester Krupczyk and Luther Bybel in connection with the theft of in
7 excess of two million dollars from the 76th Street OTB Parlor on July 13, 2018?

8 Lyman Zyrga (LZ): Yes, I do.

9 ADA: And are you testifying in exchange for any benefit to yourself, either received or
10 promised to you by the prosecution in this case?

11 LZ: Yes. In exchange for my cooperation and truthful testimony against Agent Max
12 Grabelsky and against Kyser Sosay and Rolo Tomassi if they are ever apprehended, I
13 have been allowed to plead guilty to Burglary in the First Degree instead of Felony
14 Murder. The District Attorney's Office has also promised me that they will recommend
15 and the judge has agreed that I will receive a sentence of ten years in prison instead of
16 the maximum possible sentence of twenty-five years to life that I could have gotten if I
17 had been convicted of Felony Murder.

18 ADA: Other than this conviction, do you have a criminal record?

19 LZ: How far back do you want to go?

20 ADA: Let's start at the beginning. First of all, how old are you?

21 LZ: I'm 49 years old.

22 ADA: When was your first run-in with the law?

23 LZ: When I was 13, I was adjudicated a juvenile delinquent in Family Court. I had dropped
24 out of school and run away from home. I was then arrested for Drug possession. Then,
25 when I was 15, I got arrested and was charged as a juvenile offender with Robbery. A
26 few friends and me beat up this kid and stole his bike. My case got transferred to Family
27 Court and I was sent to juvenile detention for a few months followed by 18 months
28 probation. Then, when I was 16, I got arrested for Unauthorized Use of a Motor Vehicle
29 but I got youthful offender status for that and six months in jail.

30 ADA: Sounds like a pretty eventful childhood.

31 LZ: Well, I never met my father. And my mother, God rest her soul, was an alcoholic and a
32 prostitute. So I didn't have a lot of adult supervision. Unless of course, you consider
33 Zeppo Tomassi a father figure.

34 ADA: How do you mean?

35 LZ: As you can see, I was going nowhere fast when I was a teenager. I happened to know his
36 son Rolo Tomassi from the old neighborhood on the East side and he introduced me to
37 his father. Zeppo offered me a job as a barback at his tavern. One thing led to another
38 and after a couple of years, I took on other responsibilities.

39 ADA: Such as?

40 LZ: I went from barback to short order cook to bartender and when I got a little older I
41 became one of his debt collectors.

42 ADA: Meaning what?

43 LZ: If someone owed Zeppo money and was behind in his payments, I was one of the guys
44 who applied the muscle to make sure the guy paid up.

45 ADA: And if he didn't?

46 LZ: We'd make them regret they ever borrowed money from Mr. Tomassi. More often than
47 not, they paid up eventually.

48 ADA: How many people did you beat up over unpaid debts over the years?

49 LZ: Let's just say if I were one to keep notches on my belt for every no-load I roughed up, I'd
50 have gone through quite a few belts.

51 ADA: What kind of business did Zeppo Tomassi run, exactly?

52 LZ: Big time sports betting including horse racing, college and professional football,
53 basketball, boxing, you name it. And because he made so much money, he became a
54 well-known loan shark on the East side of Buffalo-Niagara.

55 ADA: How well did you know Rolo Tomassi?

56 LZ: Pretty well. As I said: he was the one who introduced me to his father. But Rolo didn't
57 get into his father's line of work until quite sometime after I did. Rolo was a great three-
58 sport athlete in high school. Football was his best sport. He had all kinds of big name
59 schools after him until he blew out is knee at the end of his senior year. He tried rehab
60 for a while, but that didn't work out so instead of becoming a football star, he
61 eventually came to work for his father.

62 ADA: What did Rolo do for his father?

63 LZ: A little bit of everything. You could see that he was bitter over missing his big
64 opportunity in sports but he made the most of his opportunities in the world of sports
65 betting and loan sharking.

66 ADA: How do you mean?

67 LZ: He was very eager to learn all about the business but he was impetuous and
68 unpredictable. While his father was much more laid back and low key, Rolo was less

69 patient with the deadbeat debtors and far more aggressive and violent than his father
70 would have liked.

71 ADA: Can you give an example?

72 LZ: Well there was this guy whose father used to work with Zeppo back in the day before he
73 opened the tavern. The guy was behind in repaying a significant debt and he pleaded
74 with Zeppo for more time pointing out how his father and he had been friends. Zeppo
75 gave him an extension but the next day Rolo caught up to him and beat the living
76 daylights out of the guy, saying: "Don't you ever take advantage of my father's good
77 nature again. If you don't pay up, I'll kill you and your old man." Needless to say, the guy
78 found the money and paid up sooner than Zeppo had expected.

79 ADA: What about Ziggy Grabelsky? Did you know him?

80 LZ: Oh yeah. He was Rolo's sidekick since they were kids. They were classmates in grammar
81 school and in high school and they played together on the football, wrestling and
82 lacrosse teams. I think Rolo's knee injury was the best thing that ever happened to Ziggy
83 because it forced Rolo to stay in town and Ziggy sure wasn't going anywhere on his own.
84 He was a decent athlete but he wasn't in Rolo's league by a long shot. So, when Rolo
85 went to work for his father, Ziggy was right there with him. Always the wing man.

86 ADA: What kind of work did Ziggy do for Zeppo?

87 LZ: Mostly debt collection.

88 ADA: How did Rolo come to take over his father's business?

89 LZ: Zeppo had always been sickly with diabetes. His drinking didn't do much to help his
90 condition either. In the late 1990's, he got progressively worse. First he had his right leg
91 amputated below the knee. Then he lost his vision and eventually his vital organs just
92 shut down. Rolo was just devastated. His father was his biggest fan and he wanted in
93 the worst way for his son to find success as an athlete. Unfortunately, fate stepped in
94 and Rolo had to take over for his father. I remember Rolo saying at Zeppo's funeral that
95 he was going to step up the business, make a fortune, and get out of town. He said: "I
96 missed my chance after high school but I'll be damned if I spend the rest of my life in the
97 bar business here in Buffalo-Niagara." So we all figured he was a short timer and we
98 were all surprised that he stayed as long as he did.

99 ADA: So what did he do with the business?

100 LZ: He just made it more active, more professional, and much more lucrative than his father
101 ever did. It was just a much tighter ship.

102 ADA: How so?

103 LZ: As we made more and more money in the sports betting operation, he amped up the
104 loan sharking end of things and made sure we got the word out that "no unpaid debt

105 would go unpunished.” That was how we rolled. If somebody was a day late, we’d pay a
106 visit and make him regret it big time. Eventually, almost everybody found a way to pay
107 up on time and the business grew by leaps and bounds. Plus, we also ratcheted up the
108 drug dealing end of the business. Where Zeppo was always uncomfortable with the
109 drugs, Rolo had no qualms about it whatsoever. Consequently, we were rolling in it
110 hand over fist.

111 ADA: Did you or anyone in the White Russians organization ever get arrested for your
112 activities?

113 LZ: First of all, that term “White Russians” is what you guys in law enforcement called us.
114 Not all of us are white, and not many of us are Russian. But yes, occasionally people
115 would get pinched on drug weapons charges but nothing of any real significance until
116 “Dim Ziggy” as I like to call him got busted for Assault.

117 ADA: What about you, did you ever get busted?

118 LZ: Not for anything like that. I got arrested for felony drug possession in 2012. I remember
119 “Captain Kowalski and the Keystone Kops” as we used to call the OCTF police, squeezed
120 me real hard to roll over on Rolo Tomassi but I had no part of it. As it turned out, my
121 lawyer got the evidence suppressed and the case got dismissed anyway.

122 ADA: Had you informed Tomassi about Captain Kowalski’s attempts to flip you against him?

123 LZ: Of course I did. If he had found out from some other source and I hadn’t come clean, I
124 would’ve been making collections at the bottom of the Buffalo-Niagara River.

125 ADA: How did Tomassi treat you after that?

126 LZ: I remember while my case was still pending, he had Kyser Sosay frisk me a few times to
127 make sure I wasn’t wearing a wire. Of course, I wasn’t. After that, he was very cautious
128 but eventually things got back to normal, as best as I could tell.

129 ADA: What do you remember about what happened with Ziggy Grabelsky’s case?

130 LZ: I think it was in 2012. There was this deadbeat gambler, Wally Kantorski who owed Rolo
131 just under \$10,000. He was a friend of Zeppo’s who played that card one too many
132 times with Rolo. Finally, Rolo said: “Enough’s enough, old Walter needs to get the
133 message that I’m not playing anymore.” So, Ziggy and I confronted him one night and
134 gave him a beating like you wouldn’t believe. I punched him hard in the stomach and
135 Ziggy started pistol whipping him until he looked like Rocky after the tenth round with
136 Apollo Creed. But there was no reason to use a handgun because there were two of us
137 and Wally was an old-timer anyway.

138 ADA: So how did Ziggy get caught?

139 LZ: As Ziggy was laying into Wally, I hear this guy’s voice saying, “Hey, what are you doing?
140 Leave him alone!” Ziggy ran after the guy and I went for the car to pick up Ziggy after he

141 took care of the witness. Unfortunately, the eyewitness got away and later picked Ziggy
142 out of a photo array and Ziggy got busted. Using the handgun really made matters that
143 much worse for him, I think. But that was Ziggy. Always trying to show off for Rolo. In
144 my opinion, Ziggy got what he deserved for being so stupid and for not being able to
145 catch the witness.

146 ADA: After Ziggy got busted, was Tomassi aware that Captain Kowalski was trying to put the
147 squeeze on Ziggy to get to Tomassi?

148 LZ: Of course he was. In fact, I went to visit Ziggy at the Holding Center several times while
149 his case was pending. Rolo couldn't go because it wasn't safe for him to be seen
150 meeting with Ziggy directly. So I went and Kyser went on his behalf. Anyway, Ziggy told
151 me that Kowalski was all over him like a pit bull on a hambone and that he told him to
152 go take a piss up a drain pipe. I wasn't surprised to hear him say that because everybody
153 knew that he wouldn't ever rollover on Rolo.

154 ADA: How's that?

155 LZ: Loyalty. Ziggy may not have been the brightest bulb in the box but he treated Rolo like
156 his big brother. I suspect he would've taken a bullet for him rather than give him up. But
157 I'm not so sure Rolo would've done the same.

158 ADA: Why do you say that?

159 LZ: Because although Rolo loved Ziggy like a brother, in the end, Rolo was for Rolo. He was
160 always the star and it was always about him. Look what he did to me. When I got shot,
161 he never even looked back. He just jumped into that car and he and Sosay took off like a
162 couple of bats out of hell.

163 ADA: Do you know where they ended up?

164 LZ: No I don't. Someplace tropical and warm was all I could gather from our discussions
165 about the OTB deal.

166 ADA: What about you, where were you headed had you not been rear-ended, so to speak?

167 LZ: Real funny. My plan was to go to Toronto and lie low there for a while at the home of
168 my twin brother, Hyman, and eventually catch a flight under an assumed identity to our
169 family's home town in the old country. Unfortunately, that no-account, deadbeat
170 Krupczyk shot me before he bought the farm.

171 ADA: Speaking of Krupczyk, were you present when Max Grabelsky pressed him for the
172 money he owed Tomassi?

173 LZ: Yes, I was. It was Grabelsky's first assignment for Tomassi. Kind of a "prove you're for
174 real" thing. And I have to say, Max made his brother look like an amateur.

175 ADA: How do you mean?

176 LZ: Ziggy was all about putting the hurt on the deadbeats and leaving the scars to prove he
177 meant business. Max could get his point across without leaving a scratch. When we
178 caught up with Krupczyk, Grabelsky grabbed him very forcefully and calmly put the
179 muzzle of his gun into his mouth and said: "If the money's not paid in three days, the
180 next time, I pull the trigger." Krupczyk fell to his knees and started bawling like a baby.

181 ADA: How did Grabelsky react to what he had just done?

182 LZ: He acted like he enjoyed it. As we were driving back to the tavern we were laughing and
183 joking about how Krupczyk's eyes popped when Grabelsky stuck the gun barrel in his
184 mouth.

185 ADA: Let's talk about Max Grabelsky's first conversation with Rolo Tomassi about going to
186 work for Tomassi. How did that come about?

187 LZ: It was a Monday night in the fall of 2017 as I recall. We were hanging out at the bar
188 watching football when out of the blue, in walks Agent Grabelsky. I remember
189 commenting to Kyser Sosay at the time, "What's this, a one man raid"? Anyway, he sits
190 down at the bar, orders a beer and he and Rolo started talking. Sometime later, this
191 drunk guy who identified himself as Wally Kantorski, Jr. comes in and starts in on
192 Tomassi about his father being put in the hospital over his overdue debt. He kept saying:
193 "You could've called me. I would've taken care of it. Now my father's blind in one eye."
194 He then pulled a knife out of his jacket. Sosay and I ran toward him but we were at the
195 other end of the bar. The guy lunged at Rolo but all of a sudden, quick as lightning, Max
196 Grabelsky grabbed the guy's arm and twisted it behind his back until he dropped the
197 knife.

198 ADA: What happened then?

199 LZ: Grabelsky escorted the guy outside, still holding him in a hammer lock, and Sosay and I
200 followed.

201 ADA: What did you do?

202 LZ: We weren't quite sure exactly what to do, with Grabelsky being a cop and all. Anyway,
203 he says, "I'll take care of this," and then he put the guy in his car and drove away. As he
204 pulled off he said: "I'll be back."

205 ADA: When did you see him again?

206 LZ: Later that night. He returned to the bar to check in on Tomassi who was a little stressed
207 over the whole thing. One thing about Rolo, he was real tough when he had a weapon
208 or was surrounded by his entourage, but when he got caught unawares, he was a real
209 coward. Needless to say, he really ripped into Sosay and me over this whole incident.

210 ADA: So what happened when Grabelsky came back?

211 LZ: It was like a scene from the Prodigal Son. Grabelsky said: "I don't think he'll be coming
212 back," and Tomassi gave him a big hug and took him into the back office. He told Kyser
213 to grab a bottle of vodka and bring it over. He then poured shots for all of us and said:
214 "Here's to Max for saving my life." As we got near the bottom of the bottle, Tomassi
215 said: "If only your big brother could have run that kind of interference for me when we
216 were playing football." We all started to laugh because that's what we did when Rolo
217 said something that he thought was funny. The problem was, Max wasn't laughing at
218 that point.

219 ADA: What was he doing?

220 LZ: He said: "Sorry, Rolo, but after what they did to my brother, I don't see anything to
221 laugh about as far as Ziggy and my father are concerned." That kind of put a damper on
222 all the laughs. Anyway, Rolo said: "I'm sorry Max. I'm just grateful for what you did out
223 there for me. It just reminded me of how your big brother always had my back." That
224 pissed me off to no end because Rolo always gave that moron Ziggy far more credit than
225 he ever deserved. Damn Grabelskys. After all, it was his own stupidity that landed him in
226 jail. But all Max wanted to talk about was how the OCTF had stuck it to Ziggy for refusing
227 to roll over on Tomassi.

228 ADA: And how did Tomassi respond to that?

229 LZ: He said: "Well, maybe we can make them pay for what they did to your family."

230 ADA: What did Grabelsky say in response?

231 LZ: He said: "What have you got in mind?" Tomassi then said: "You take your brother's
232 place in our operation and you tell those lame brains at OCTF that you've gotten inside."
233 Tomassi said it was the perfect set-up. Grabelsky would feed them bullshit information
234 while "running interference" for him.

235 ADA: How did Grabelsky respond?

236 LZ: He didn't say much. He just looked very serious and said: "Let me think this thing
237 through when my head is clear and I'll get back to you."

238 ADA: And did he get back to him?

239 LZ: A couple of days later he came back and told Tomassi that he was in. Tomassi said:
240 "Great, you'll start right away. I've got a little collection job that needs your immediate
241 attention." He was referring to the Krupczyk matter we already talked about.

242 ADA: Did Tomassi have you or Sosay frisk Grabelsky before you and he went off on this
243 assignment?

244 LZ: No, he didn't. In fact, one time I asked him if he really trusted Grabelsky and he said:
245 "He may be a cop, but the OCTF destroyed his family and where we come from, family
246 always comes first."

247 ADA: You said earlier that the plan was for Grabelsky to give the OCTF bogus information
248 while running interference for Tomassi, what kind of information did he give them?

249 LZ: Well for one thing, during our early discussions, Grabelsky said that his captain would
250 expect him to wear a wire and Tomassi told him: "Tell him that I had you frisked and
251 that it was too dangerous." For another, the information about the OTB job going down
252 at the 19th Street branch was changed to the 76th Street branch, but Grabelsky never
253 passed that on to his bosses at the OCTF.

254 ADA: When was the location changed?

255 LZ: I remember it was right around the last week of June. Tomassi told us that Luther Bybel
256 had just informed him that the manager of the 76th Street OTB branch, Harry Gondorff,
257 told him (Bybel) that he (Gondorff) would need coverage at his branch on Friday,
258 July 13, 2018 because he had airline tickets and reservations in Las Vegas for a weekend
259 gambling junket at the Golden Nugget Hotel. Bybel said that he expected to be assigned
260 to the 76th Street branch because OTB had sent him there in the past whenever
261 Gondorff was off.

262 ADA: How did this affect the plans regarding the heist?

263 LZ: Other than the change in location, not at all, really. Tomassi said that Bybel assured him
264 that there would be several million in the vault on 76th Street because that branch did
265 just about the same amount of business as the 19th Street location.

266 ADA: Who was present when Tomassi relayed this information from Bybel?

267 LZ: Me, Kyser Sosay, Grabelski, and that woman, Matty Walker.

268 ADA: Matty Walker?

269 LZ: Yeah, she started coming around with Grabelsky. You could see that he was wrapped
270 around her little finger. She would have him do stupid stuff just to show she could boss
271 him around. I remember one time she had him balance an olive on the tip of his nose.
272 Moron. But that was pretty much a one-way street.

273 ADA: One-way street?

274 LZ: Yeah, she put up with Grabelsky, but, behind his back, she was making a play for Rolo.
275 That's the way it had been since high school. Max was like a groupie, but Rolo was the
276 star.

277 ADA: How did Rolo react?

278 LZ: The way any normal guy would react. It wasn't long before Matty was coming around
279 when Grabelsky wasn't there, going back into Rolo's office alone with him, that sort of
280 thing.

281 ADA: Did Max know about this?

282 LZ: Naw, those Grabelsky kids never were too bright. I don't think Max had any idea that
283 Matty was ready to move on.

284 ADA: Back to the change in the plan, was Grabelsky present for this conversation?

285 LZ: I'm pretty sure he was there. He was there for most of the planning stuff, but we just
286 figured that Matty would pass along information to Max, so it really wasn't that
287 important.

288 ADA: So Max and Matty both attended the planning meetings?

289 LZ: Yeah, like I said we just figured that they would tell each other about what happened.

290 ADA: Did they come to these meetings together?

291 LZ: I'm pretty sure that they did. We didn't take attendance.

292 ADA: So what was Grabelsky's plan with respect to his superiors at OCTF?

293 LZ: He said that in order to carry this thing off while appearing to keep the OCTF in the loop,
294 he would wait as long as possible and then give them some bullshit information about
295 the details of the theft.

296 ADA: What details was he talking about?

297 LZ: He was a little cagey about that. All he said was that he would take care of it so that we
298 would have enough time to get in and get out and disappear before the OCTF realized
299 that they were at the wrong place. It would've worked if Krupczyk hadn't shot me.

300 ADA: At any time between late June when Tomassi informed you all about the change in
301 location and July 13, 2018, did Tomassi ever indicate that the plans to hit the 76th Street
302 branch on July 13th were uncertain or subject to confirmation by Bybel?

303 LZ: No.

304 ADA: And, focusing specifically on July 13, 2018, do you have any knowledge of Luther Bybel's
305 calling Rolo Tomassi that morning to report a last minute change in location from 19th
306 Street to 76th Street?

307 LZ: No. Like I said, that change had been made a couple of weeks earlier.

308 ADA: So there were no meetings on the morning of July 13th where Tomassi informed you all
309 of the change in location?

310 LZ: No.

311 ADA: So then, what was the plan for the OTB theft?

312 LZ: The plan was that Sosay would wait for us in the car a few doors away and we would all
313 walk in the 76th Street branch at around 4:35 p.m. which, according to Bybel, would be a
314 quiet time because it was coming up on the dinner hour. Tomassi would escort Bybel in

315 the back room where the vault was located, go inside, and load up a duffle bag that
316 Bybel made available. Grabelsky and I would watch any customers and cover the door
317 while Tomassi was collecting the loot.

318 ADA: So what happened when you entered the OTB?

319 LZ: Bybel was at the window waiting on a customer who turned out to be Chester Krupczyk
320 of all people. Tomassi pointed a gun at Bybel and said: "Let's go to the back room." As
321 they headed toward the back room, Krupczyk looks at us and starts babbling on about
322 not being able to get the money he owed. I asked Grabelsky: "What the hell is he talking
323 about?" Grabelsky just put the gun in his face and said: "One more word and I'll pull the
324 trigger." It was déjà vu all over again.

325 ADA: By the way, was there any discussion in your planning of this heist that anyone would be
326 killed?

327 LZ: The only violence that was part of the plan was that Tomassi would "knock out" Bybel to
328 make it look like a robbery, but Bybel knew that was coming. He said: "With all the
329 money I owe you guys, I'd rather wake up with a bad headache than not at all." So, the
330 guns we all had were for show to make it look like a robbery and Tomassi told us: "No
331 gunfire unless it's absolutely necessary." Little did I know that Tomassi didn't trust Bybel
332 to keep his mouth shut. And as for Krupczyk, he was in the wrong place at the wrong
333 time. I, for one, was shocked when Tomassi pulled the trigger and shot Krupczyk
334 because he was the one who had said: "No violence unless it's absolutely necessary."

335 ADA: What happened after Tomassi shot Krupczyk?

336 LZ: He headed out the door with the duffle bag over his shoulder and Grabelsky followed
337 right behind him. I then walked out behind Grabelsky and just as I passed through the
338 open door, I heard a gunshot followed by this tremendous burning sensation in my left
339 buttock. I fell forward to the ground and dropped my gun out in front of me.

340 ADA: Where was Tomassi at that point?

341 LZ: He was getting into the passenger side door of Sosay's car. I called out: "I'm hit," but he
342 didn't so much as turn around. That just confirmed what I've always believed about
343 Tomassi. Rolo was all about Rolo.

344 ADA: And you don't know where he went?

345 LZ: Well, the plan was for all of us to go to the Painted Bird Marina boathouse, which is
346 owned by Tomassi's friend, Jerry Kosinski, down along the Buffalo-Niagara River. We
347 were supposed to divide up the money and then Jerry was going to drive us on his boat
348 across the river just past Raspberry Island over to Fort Erie, Canada.

349 ADA: What about customs?

350 LZ: If you drive by car across the War and Peace Bridge, you have to pay a toll and go
351 through customs. But if you cross the river by boat, like a lot of fishermen do, you're
352 supposed to call customs on your radio and they send a border patrol officer to meet
353 you at whatever dock you land at. It's an honor system but a lot of boaters don't do it.
354 Of course, we weren't going to call customs.

355 ADA: So what was the plan once you got to the other side?

356 LZ: We were going to drive to Toronto in a car that Jerry had already lined up for us in Fort
357 Erie. Once we got to Toronto, it was everyone for himself. As for Rolo, all he said was
358 that he was going to the islands. Sosay said nothing about his plans and I already told
359 you where I was headed.

360 ADA: What about Grabelsky?

361 LZ: He said he was going to meet up with some woman named Phyllis in Toronto and then
362 work his way back to the states through Michigan and eventually find his way over to
363 Chicago. He said something about having a son there that he hadn't seen in quite a
364 while.

365 ADA: Did he express any reservations about the idea of living life on the lam as a wanted
366 criminal?

367 LZ: He didn't like it at all but he said that after what they did to his family he was completely
368 disillusioned. As for not getting caught, he said that no one knew more about blending
369 in than he did.

370 ADA: Did Tomassi say why he was willing to leave behind his life in Buffalo-Niagara? After all,
371 by all accounts it was pretty lucrative, wasn't it?

372 LZ: Like I said, he had always carried on about missed opportunities on account of his knee
373 injury. He really believed that he could've become a major college football player and
374 then a star in the NFL. He saw it as his ticket out of Buffalo-Niagara. Then, when he got
375 injured, those dreams went down the drain. But what really got him going was when he
376 found out that he had diabetes. That's when he decided he needed to hit a big score
377 and leave town.

378 ADA: What about Zeppo's Tavern?

379 LZ: In early June 2018, he transferred the business to his uncle who also happened to be his
380 namesake. That way, anyone checking the records of the business would still see the
381 name "Rolo Tomassi" as owner and operator.

382 ADA: Okay. Thank you, that's all I have.

383 LZ: Not a problem.

1 **GRAND JURY TESTIMONY CAPTAIN KARL KOWALSKI**

2 **August 10, 2018**

3 The Witness first being sworn.

4 Assistant District Attorney (ADA): Captain Kowalski, by whom are you employed?

5 Karl Kowalski (KK): The Buffalo-Niagara Police Department.

6 ADA: What is your position in the Department?

7 KK: I am the chief of the Department's Organized Crime Task Force (OCTF).

8 ADA: Please describe your duties and responsibilities.

9 KK: I supervise a team of undercover field detectives who work in conjunction with agents
10 from the FBI, DEA and ATF investigating a wide variety of organized crime related
11 activities.

12 ADA: What types of activities?

13 KK: You name it: drug trafficking, illegal gun sales, loansharking, child pornography, robbery
14 and homicides.

15 ADA: What do you mean when you say organized crime?

16 KK: It generally refers to criminal activity that, instead of being isolated in occurrence or
17 limited to random conduct by individuals, is part of a larger pattern of on-going criminal
18 conduct carried out by members of a criminal group, gang or organization whose
19 ultimate purpose is to generate revenue. There's usually some type of hierarchy or
20 packing order of authority from the street level soldiers leading up through the ranks to
21 captains and generals.

22 ADA: Do you mean like the mafia?

23 KK: Well, that's the traditional or stereotypical model but it also includes different groups
24 who typically share a common ethnic or racial background and who band together to
25 one degree or another for common goals.

26 ADA: And what would those goals be?

27 KK: Committing crimes and making money!

28 ADA: I see. And how long have you been chief of the OCTF?

29 KK: I'm in my twelfth year as chief but I've been with the OCTF for 16 years. I was an
30 undercover OCTF detective for four years before being promoted to chief in 2007. I was
31 in line to be appointed to the State OCTF until this OTB case went haywire and gave our
32 entire bureau a huge black eye.

33 ADA: We'll talk about that shortly but right now, tell us about your background in the
34 department.

35 KK: I was a precinct patrol officer for ten years.

36 ADA: So you joined the force in 1994?

37 KK: Yes. After I graduated from Widener University with a dual degree in Criminal Justice
38 and Psychology in 1990, I enrolled in the police academy and became a patrol officer in
39 1994.

40 ADA: How did you get involved in organized crime investigations?

41 KK: I've always been intrigued with "OC", by that I mean organized crime. I got hooked
42 when I saw the *Godfather One* and then *Two*. Forget *Three*, that was a bust. Anyway, I
43 was always fascinated by the duality of the OC character type, you know, the loving
44 family man who can kill without hesitation but acts like he can't believe it when
45 someone in his family gets whacked. Anyway, as soon as I became eligible for detective
46 rank in 1990, I put in for the OCTF but didn't get in until 2004. So from 1998 to 2004 I
47 did regular detective work. Then one of the OCTF detectives retired and I got promoted
48 into the OCTF.

49 ADA: Did you receive any special training for this assignment?

50 KK: Yes. The department sent me to the FBI's organized crime investigation training
51 program for six months. I also attended seminars sponsored by DEA, ATF and the State
52 OCTF.

53 ADA: How do OC undercover investigations differ from, say, regular street-crime
54 investigations?

55 KK: Well, the OC investigations are much more involved in terms of time, manpower, and
56 complexity. They usually involve months of surveillance, use of undercover informants,
57 or having our detectives infiltrate the target organization in an undercover capacity. And
58 because the criminal activity is ongoing, the investigations go on for months and
59 sometimes even years so that we can make the best cases against the largest number of
60 targets.

61 ADA: What does that mean?

62 KK: Our detectives sometimes play the role of drug dealers or buyers and in some cases
63 they even become members of the gang or organization under investigation. Obviously,
64 they have to be skilled at gaining the trust of the targets and, of course, if their cover is
65 blown, it can become hazardous to their health.

66 ADA: Are you familiar with an individual by the name of Rolo Tomassi?

67 KK: Yes, I am. He's the head of a local Eastern European gang called the White Russians.

68 ADA: But, isn't Tomasi an Italian name?

69 KK: Yes, but his mother, Wanda Ignatowsky was Russian.

70 ADA: How long have you had Tomassi under investigation?

71 KK: We've had him in our crosshairs for ten years off and on. We would have had him dead
72 to rights on Felony Murder and Burglary charges had it not been for one of our
73 detectives, Max Grabelsky, double crossing the department and disgracing his badge by
74 purposely giving us bad information about the location of the OTB heist. Because of him,
75 any hopes of my advancing through the OCTF ranks are gone. In fact, I'm lucky I still
76 have a job in law enforcement.

77 ADA: I'd like to ask you some questions about your department's investigation of Rolo
78 Tomassi. First of all, how did he become a target of an investigation?

79 KK: Well, it actually goes back to his father, Zeppo Tomassi, who ran a very lucrative sports
80 gambling business and loan sharking operation out of his bar, Zeppo's Tavern over on
81 the east side of the city. He'd been arrested a few times in the early 1990's on charges
82 of Promoting Gambling, but he was acquitted every time he went to trial. He got sick in
83 the late 1990's and died from complications due to diabetes. That's when Rolo, his only
84 son, took over the operation.

85 ADA: What kind of activity was he involved in?

86 KK: Rolo took over where his father left off and took the business to a much higher level.

87 ADA: How do you mean?

88 KK: His father was never really into drug dealing except for a little marijuana and cocaine
89 here and there, but nothing substantial as far as we could tell. But Rolo had his people
90 moving significant amounts of cocaine in the streets. He also stepped up the loan
91 sharking activity.

92 ADA: In what way?

93 KK: Putting a lot more money out on the street and coming down on the dead beats a lot
94 swifter and harder than his father ever did. I mean there were guys beaten to within an
95 inch of their lives because they couldn't pay what they owed. The problem was, they
96 were all too frightened to identify their assailants or cooperate with the DA.

97 ADA: Were you ever able to make any cases of substance against Tomassi or any of his
98 people?

99 KK: Yes we did. In 2014, we were able to bring felony Assault and Weapons charges against
100 Tomassi's right hand man and chief enforcer, Ziggy Grabelsky. As luck would have it, an
101 eyewitness observed Grabelsky and another one of the White Russians pistol whipping
102 this guy, Wally Kantorsky, who had failed to pay an \$8,000.00 debt. The witness was a
103 single guy with no family who was willing to testify as long as we promised to provide

104 him with protection and relocate him after the trial which we did. He testified and Ziggy
105 got convicted of both counts.

106 ADA: Did you attempt to use this case as leverage against Grabelsky to persuade him to roll
107 over on Tomassi?

108 KK: Before the trial, the DA told him and his lawyer that if he got convicted of Assault we
109 would press the judge to give him the maximum of 25 years in jail. If he agreed to
110 cooperate, the offer was to a misdemeanor with a minimum sentence recommendation
111 of two years.

112 ADA: How did he reply?

113 KK: He pretty much told us to shove it. I wasn't all that surprised since he and Tomassi grew
114 up together. They went to the same high school, played sports together and have
115 always been like brothers. If it wasn't for Tomassi, Grabelsky probably would've been
116 permanently unemployed.

117 ADA: So what happened with Grabelsky?

118 KK: After he was convicted, we went back to him and his lawyer and said if he agreed to
119 cooperate against Tomassi, we would ask the DA to recommend a sentence of no more
120 than seven years in jail. We even had his brother, Max Grabelsky, who had just gotten
121 transferred and assigned to our bureau from Chicago, speak to him but it was no use.
122 Ziggy just wouldn't budge.

123 ADA: So how did you respond?

124 KK: I told the prosecutor that this was our first major conviction against the White Russians
125 and we needed to make a strong statement. So, the DA recommended the maximum of
126 twenty-five years.

127 ADA: What sentence did he receive?

128 KK: The judge did not impose the maximum since he did not have any prior felony
129 conviction. But he did give him 15 years which is still a pretty big hit for a non-homicide
130 offense.

131 ADA: You said that Max Grabelsky was transferred to your unit?

132 KK: Yes. He came on board in 2014 after serving as an undercover agent in Chicago for
133 several years. He had put in for the transfer because his father, Edward Grabelsky, was
134 stricken with lung cancer in late 2012 and he had no one to take care of him after Ziggy
135 went to prison. The DA was able at my urging to persuade the judge to remand him
136 without bail with the result that he sat in jail from the day he was arrested.

137 ADA: How well did you know Agent Grabelsky when he came over to your unit?

138 KK: I had met him after he graduated from the FBI Academy and just before he was assigned
139 to Chicago. He wanted in the worst way to work in Buffalo-Niagara, but the bureau
140 doesn't assign their new agents to work in their home towns right out of the academy.
141 From what I heard, he had been involved in a long-term undercover investigation of
142 Eastern European Organized Crime (EEOC) in the Chicago area that resulted in several of
143 EEOC's main players getting convicted of Racketeering and Extortion charges. As I
144 understand, the bureau offered him a big promotion with a transfer to Washington,
145 D.C., but he chose to come to Buffalo because of his father's condition.

146 ADA: How did Agent Grabelsky get assigned to your OCTF?

147 KK: When he returned to Buffalo, the bureau detailed him to my unit as part of our joint
148 task force with the FBI, DEA, and ATF.

149 ADA: And how did he get in with Rolo Tomassi?

150 KK: As I said earlier, we had been trying for years to make a case against Tomassi but aside
151 from a few nickel and dime busts against some of his street guys, we were never able to
152 get to him. Then, when Ziggy Grabelsky got busted, I thought we might be able to make
153 some headway by putting the squeeze on him. I thought that Agent Grabelsky would be
154 the perfect person to talk some sense into his brother but Ziggy wanted no part of it.
155 Then, not long after Ziggy was sentenced in 2015, Agent Grabelsky told me that he
156 believed that he had a way to get inside the White Russians' organization.

157 ADA: Did he explain what he meant?

158 KK: Yes. He told me that he had stopped in Zeppo's Tavern when this drunk guy who
159 claimed to be Wally Kantorski, Jr. came in and pulled a knife on Tomassi. Agent
160 Grabelsky disarmed the guy and took him outside. He then drove the guy home and told
161 him to stay away from Tomassi unless he wanted to end up like his father.

162 ADA: So how did this lead to Agent Grabelsky's going to work for Tomassi?

163 KK: Grabelsky stated that Tomassi expressed his gratitude by saying that he wanted to repay
164 him for saving his life. At that point Grabelsky said that a light had gone off in his head
165 and he saw this as the perfect opportunity to get in with Tomassi.

166 ADA: Did he explain how?

167 KK: Yes. He said he and Tomassi went into the back room and started doing shots of Stoli
168 and reminiscing about the old days in the neighborhood. He told Tomassi that he and
169 his older brother Ziggy were his heroes when they played football and lacrosse for Saint
170 Stanislaus High School. He then told Tomassi how angry he was with the OCTF for
171 sticking it to his brother. He told him he didn't appreciate being put in the middle of the
172 whole thing when he was asked to lean on his brother to roll over on Rolo. He also told
173 Tomassi that his brother's going to jail for fifteen years on an Assault charge had put
174 their father in an early grave. As it happened, after Ziggy was sentenced, his father killed
175 himself by overdosing on pain pills. The guy had terminal cancer as it was.

176 ADA: How did Tomassi respond to Agent Grabelsky's remarks?

177 KK: According to Grabelsky, Tomassi half-jokingly said: "Why don't you work for me?"
178 When Grabelsky reminded him that he worked for OCTF, Tomassi replied "It's the
179 perfect cover. You tell them you're working undercover trying to get to me and
180 meanwhile you'll keep me one step ahead of the law." Grabelsky said he'd bet back to
181 him.

182 ADA: How did you respond to this information?

183 KK: Quite honestly, I saw it as our first real opportunity to get close to Tomassi. I instructed
184 Agent Grabelsky to tell Tomassi that he was on board and that he should offer to
185 supervise his loan sharking operation and see to it that the authorities never got too
186 close like they did with Ziggy.

187 ADA: After Agent Grabelsky got inside, how did things develop?

188 KK: Well, Agent Grabelsky informed me that Tomassi first had his henchmen frisk him for a
189 wire. He then informed him that he had a collection job to do for him as a sign of good
190 faith. He explained that this deadbeat gambler, Chester Krupczyk was long overdue in
191 repaying a \$5,000.00 debt.

192 ADA: How did the OCTF handle this situation?

193 KK: After Agent Grabelsky filled me in on the particulars, I arranged for him to take
194 \$5,000.00 in cash from our asset forfeiture fund and to bring it to Tomassi as proof that
195 the collection had been made.

196 ADA: And how did that work out?

197 KK: Agent Grabelsky informed me that he had to make it look real when he confronted
198 Krupczyk about his past due balance. He also said that after he gave Tomassi the
199 \$5,000.00, he felt a little more confident that Tomassi trusted him.

200 ADA: Was this or any other transaction involving Agent Grabelsky recorded?

201 KK: No. Agent Grabelsky made it very clear that wearing a wire would be too dangerous.
202 When I asked him to consider it, he said "He frisked me once, he could do it again."

203 ADA: Let's turn now to the OTB homicide. How did that whole thing come about?

204 KK: It galls me just to think about it. In early June 2018, Agent Grabelsky reported that Rolo
205 Tomassi had learned that he had contracted type two diabetes just as his father had. He
206 said that he'd be damned if he was going to die in Buffalo-Niagara like his father did so
207 he decided he wanted to hit one big score and retire to the Islands.

208 ADA: Did Tomassi ever say what "Islands" he was talking about?

209 KK: No.

210 ADA: Did Grabelsky tell you what “big score” Tomassi had in mind?

211 KK: Yes. Grabelsky explained that one Luther Bybel, the manager of the OTB branch parlor
212 on 19th Street, had agreed to make the safe at his branch “accessible” to Tomassi to
213 satisfy a significant gambling debt that Bybel could not repay. Bybel informed Tomassi
214 that it would be better for him if the heist looked like a robbery rather than an inside
215 job.

216 ADA: So what was the plan as explained by Agent Grabelsky?

217 KK: Tomassi, Grabelsky and Lyman Zyrga, another one of Tomassi’s people, would enter the
218 OTB parlor at 111 19th Street in Buffalo-Niagara at 4:35 p.m. on Friday July 13, 2018
219 while Luther Bybel was on duty and just after the clerk, Barbara Ganoush, left as she
220 always does on Fridays to take her elderly mother out for a fish fry. Another Tomassi
221 gang member, Kyser Sosay, would be waiting in the getaway car a few parking spaces
222 away from the entrance to the OTB parlor. Once inside, Tomassi would escort Bybel at
223 gunpoint into the back office where the safe was located. Then, after Bybel opened the
224 safe, Tomassi would hit him over the back of the head hard enough to knock him out
225 and “cloud” his memory and make it look like a robbery. Zyrga and Grabelsky were
226 supposed to cover any customer who might also be inside the parlor. After the theft,
227 they were going to drive to the Painted Bird Marina, which is owned by Tomassi’s friend
228 Jerry Kosinski. They would divide up the money and Kosinsky would then transport them
229 across the Buffalo-Niagara River on his boat. Once they got across to Fort Eric, Canada,
230 they would then drive to Toronto and then split up from there and go their separate
231 ways.

232 ADA: What was the OCTF plan for apprehending Tomassi and his cohorts?

233 KK: Since it was an inside job, we were confident that there would not be any violence, at
234 least not inside the OTB Parlor itself. So our plan was to have several of our undercover
235 officers who would be waiting in vehicles and in nearby stores swoop in on the
236 defendants just as they exited the parlor. At the same time, other officers would block
237 in Sosay’s vehicle and converge on him with weapons drawn from both sides. We also
238 had a team of agents stationed at the Painted Bird marina just in case they got away. I
239 figured that after we arrested Tomassi, Zyrga, and Sosay, we would nip Bybel as soon as
240 he learned that our agent was aware of his involvement right from the starting gate, no
241 pun intended. Unfortunately, as it turned out, it was Tomassi who was playing Grabelsky
242 while Grabelsky was playing us.

243 ADA: How do you mean?

244 KK: Well, Tomassi and Sosay got away and disappeared with about two and a quarter
245 million dollars in cash, two people are dead and Agent Grabelsky has the satisfaction of
246 knowing that he made it all happen so he could get back at me and the OCTF for going
247 hard after his brother which he believes caused his father to take his own life.

248 ADA: Please explain to the Grand Jury what you mean when you say that Agent Grabelsky
249 "made it all happen."

250 KK: As I stated earlier, Grabelsky had informed us all along that the theft was going to take
251 place on Friday July 13, 2018 at 4:35 p.m. at the OTB Parlor located at 111 19th Street in
252 Buffalo-Niagara. At about 3:50 p.m. on that day, out of the blue, I saw this note on my
253 desk addressed to my attention.

254 ADA: What do you mean, "out of the blue"?

255 KK: Well, I had gone to the lavatory to deal with an irritable bowel situation which I
256 attributed to nerves. It gets to be a real problem whenever I get nervous, like just before
257 an arrest, or when I have to testify in court. Like today, I was getting ready to come in
258 here, when . . .

259 ADA: Captain Kowalski, can we just stick to what happened on July 13th?

260 KK: Oh, yeah, sure. I was exiting the lavatory which is next to my office and was headed for
261 our briefing room on the second floor where my OCTF agents were waiting for my final
262 instructions before we hit the street. As I passed by my office, I noticed on my desk this
263 envelope that wasn't there when I left my office ten minutes earlier. I picked it up and
264 saw that it was addressed to my attention.

265 ADA: I'm showing you Grand Jury Exhibit One for identification. Can you identify it?

266 KK: Yes. That's the envelope that was on my desk.

267 ADA: I'm now showing out Grand Jury Exhibit Two for identification. Can you identify it?

268 KK: That's the note that was inside the envelope.

269 ADA: What does it say on the envelope?

270 KK: It says: "Captain Kowalski, Urgent."

271 ADA: Do you recognize the handwriting?

272 KK: Yes. It's Agent Grabelsky's.

273 ADA: How do you know?

274 KK: I've seen his handwriting many times on his signed police reports and on memos to
275 myself or to other detectives.

276 ADA: I'm again showing you Grand Jury Exhibit Two. Do you recognize the handwriting on this
277 document?

278 KK: Yes. It's Agent Grabelsky's.

279 ADA: Would you read it for the Grand Jury?

280 KK: Yes. It says: "Cap – Strike now at 19th Street Branch!" His initials "MG" are at the
281 bottom.

282 ADA: Do you know what "Cap" means?

283 KK: Yes. It's an abbreviation for Captain. My detectives frequently call me "Cap." When I
284 was lieutenant, they called me "Lou" as is short for lieutenant.

285 ADA: How did you interpret the message, "Strike now at 19th Street Branch?"

286 KK: I took it to mean that, for whatever reason, the heist had been pushed back in time so
287 we need to get over to the OTB Parlor right away instead of later.

288 ADA: Did you consider the possibility that the message was that the location of the heist had
289 been switched to the 76th Street branch of the OTB?

290 KK: No. If you look at the numbers, the first number is a one and the second number is a
291 nine.

292 ADA: What about the first letters, did you consider the possibility that they could stand for
293 "change of plans"?

294 KK: First of all, the second letter is an "a", not an "o". Secondly, I don't know anyone who
295 abbreviates "change of plans" as COP or any other way, for that matter. How would I
296 know what that means? Besides, even if it was short for "change of plans", the change,
297 as far as I could tell, was to the time, not the location.

298 ADA: So the number, in your view, is "19" not "76"?

299 KK: I don't see how that number can be anything other than "19".

300 ADA: Did you consider the possibility that the number is "76"?

301 KK: No. The thought never crossed my mind.

302 ADA: But there is an OTB Parlor on 76th Street, isn't there?

303 KK: Of course there is. As we all know, this theft went down at the OTB Parlor at 99 76th
304 Street while we were picking our noses outside the 19th Street Parlor. Just as Agent
305 Grabelsky obviously intended.

306 ADA: Well, Agent Grabelsky's intentions are for the Jury to determine.

307 KK: I'm sorry. I just get so upset when I think about what happened. Two people are dead.
308 Tomassi got away with murder and all because one of our detectives sent us on a wild
309 goose chase. In hindsight, I should have seen the signs but it never occurred to me that
310 an officer of the law would betray the badge like this.

311 ADA: What signs are you talking about?

312 KK: For starters, when I first approached Agent Grabelsky about persuading his brother to
313 give up Tomassi, he said that the whole thing made him very uncomfortable because
314 Ziggy was family and Tomassi had always looked out for him. But I reminded him that
315 since Ziggy had already been convicted, he was looking at significant jail time. So, his
316 cooperation could only serve to help him by reducing his exposure.

317 ADA: How did he respond to that?

318 KK: He said: "I understand but you've got to appreciate the awkward position that I'm in."
319 Nevertheless, he assured me that he knew what he had to do and later on when he
320 talked about how he could turn the lifesaving incident into an opportunity to get close
321 to Tomassi, I believed him. Or I should say I wanted to believe him because I saw it as
322 my first real opportunity in such a long time to bring Tomassi down.

323 ADA: What other signs of his betrayal were there?

324 KK: Well, even after he proved his mettle with Tomassi with the \$5,000 "collection" from
325 Krupczyk, Agent Grabelsky still refused to even consider wearing a wire. If he had been
326 wired on July 14th, we would've known that morning that the OTB site had been
327 changed. Instead, he leaves me this cryptic note at the last minute which obviously he
328 had to do otherwise he would have had no explanation for leaving us in the dark. Of
329 course, we now know that they were planning to hit the 76th Street Parlor for weeks.

330 ADA: Anything else that, in retrospect, should have warned you about Agent Grabelsky?

331 KK: The coup de grace was his father. After he killed himself in 2015, I attended the funeral
332 and overheard Agent Grabelsky talking to his brother Ziggy who had obtained court
333 permission to attend the service under police guard. When Agent Grabelsky asked me to
334 intercede and obtain the DA's consent to his brother's release under guard, I relented in
335 the faint hope that he still might persuade his brother to give up Tomassi. Anyway, I was
336 standing in the crowd outside Saint Casimir's Church behind the Grabelsky brothers as
337 their father's casket was lifted into the back of the hearse. Once the back door was
338 closed, Ziggy turned to his brother and said: "Max, this would never have happened if I'd
339 have been home. Somebody's gotta pay and you know what I'm talking about."

340 ADA: What, if anything, did Agent Grabelsky say in reply?

341 KK: I heard him whisper back: "Don't worry, I'll take care of it."

342 ADA: Did you confront Agent Grabelsky about this?

343 KK: As we left the funeral, I kind of off-handedly asked him what his brother was carrying on
344 about. He said that Ziggy was worried about the costs of the funeral because their
345 father had no burial funds set aside and he was in no position to do anything because he
346 was in jail. Foolishly, I accepted his explanation at face value.

347 ADA: Now, turning your attention to July 14th, after reading the note from Agent Grabelsky
348 what did you do?

349 KK: I rushed to the briefing room and immediately advised our team of detectives and
350 agents of the time change and told them to get over to the 19th Street branch
351 immediately. I arrived on site about 4:10 p.m. We all took our positions outside the
352 parlor and waited.

353 ADA: What happened then?

354 KK: Well, nothing. After about 25 minutes with no sign of the vehicle that Agent Grabelsky
355 told us to be on the lookout for, I started to get a bad feeling. Then I got a transmission
356 from dispatch that 911 had just received a call from an unknown caller about people
357 with guns at the OTB Parlor on 76th Street. Apparently, someone had walked up to the
358 front door and looked inside the parlor and turned away when he saw Agent Grabelsky
359 and Lyman Zyrga inside with weapons.

360 ADA: What did you do then?

361 KK: I immediately got on the police radio and advised my team to abort this stakeout and
362 high-tail it over to the 76th Street branch.

363 ADA: How long did it take to get there?

364 KK: About 10 to 15 minutes.

365 ADA: What did you observe when you arrived?

366 KK: Several officers who had arrived just before me were converging with guns drawn on
367 Lyman Zyrga who was lying face down on the sidewalk just outside the front entrance of
368 the OTB Parlor. One of our officers picked up a pistol that was lying on the sidewalk in
369 front of Zyrga just out of his reach. As I got closer to him, I could see a lot of blood on
370 the seat of his pants. He was moaning and complaining "he shot me in the ass."

371 ADA: What about Agent Grabelsky, where was he?

372 KK: He was inside the parlor kneeling down next to a man who was lying down on the floor
373 motionless in a fetal position with blood on his abdomen. I noticed there was a revolver
374 on the floor next to him.

375 ADA: Did you come to learn the identity of that man?

376 KK: Yes. It was Chester Krupczyk of all people. Apparently, he was there placing a bet when
377 the heist went down. I guess old habits die hard.

378 ADA: What did you do when you entered the parlor?

379 KK: I shouted to Agent Grabelsky: "What the hell is happening here?" and he said: "Call an
380 ambulance." He also said: "The manager's in the back room."

381 ADA: What did you do at that point?

382 KK: It was chaotic. I wasn't sure what to think but out of caution, I instructed my detectives
383 to call an ambulance while I collected the gun and to keep a close watch on Agent
384 Grabelsky.

385 ADA: Why did you tell them that?

386 KK: Because while part of me wanted to believe that this was all a big mistake, another part
387 of me suspected that somehow Grabelsky was in on it.

388 ADA: Did you go into the back room?

389 KK: First I picked up the gun that was on the floor next to Krupczyk and tagged it.

390 ADA: What do you mean when you say you tagged it?

391 KK: Well, I put a tag with my initials on it so that I would know that it was the gun that I
392 picked up off the floor. I kept it with me until I got back to the precinct. When I got back,
393 I put it into the evidence locker.

394 ADA: I'm showing you what has been marked as Exhibit 3. Do you recognize this?

395 KK: Yes, it's the gun that I picked up off the floor in the OTB on July 14th.

396 ADA: How do you know it's the same gun?

397 KK: Because it's still got my tag on it.

398 ADA: O.K., let's go back to the day of the robbery. After picking up the gun, what did you do?

399 KK: I and several officers went into the back room and just inside the vault we found the
400 manager, Luther Bybel lying face down on the floor with his head and neck twisted at a
401 very unnatural angle.

402 ADA: Was he alive or dead?

403 KK: He had no pulse. He wasn't breathing.

404 ADA: So what happened then?

405 KK: The ambulance personnel and crime scene investigators arrived on the scene and I went
406 out front to have a few words with Agent Grabelsky.

407 ADA: What did you say to him?

408 KK: I said: "What the hell just went down? Why were we on 19th Street while you were here,
409 and where the hell is Tomassi?"

410 ADA: What did he say?

411 KK: He said: "What are you talking about, I told you that the plans had been changed." I
412 replied: "You didn't say anything about a change in locations." And he said: "The hell I
413 didn't."

414 ADA: Do you know where Tomassi and Sosay were at that point?

415 KK: I sure as hell do not. I radioed the OCTF team that was at the Painted Bird Marina but
416 they saw no signs of them. It was like they disappeared into thin air.

417 ADA: And where was Zyrga when you had this confrontation with Agent Grabelsky?

418 KK: At the curb on a gurney getting lifted into the back of an ambulance.

419 ADA: Did you speak with him after he was taken to the hospital?

420 KK: Yes. Later that evening after he underwent surgery to remove the bullet from his
421 posterior. I approached him in his hospital room and told him that he was going down
422 for two counts of Felony Murder and he should tell us where to find Tomassi and Sosay
423 if he wanted any hope of not going to jail for the rest of his life.

424 ADA: How did he respond?

425 KK: He said: "I don't know a damn thing. I want to talk to my lawyer."

426 ADA: Did you talk to Agent Grabelsky again after you left the scene of the crime?

427 KK: Yes. Later that evening, I interviewed him in the presence of several other OCTF agents.

428 ADA: What did he say?

429 KK: He kept insisting that he had informed me of the last-minute change of location and
430 that I must have misread his note.

431 ADA: Did you believe that you misread the note?

432 KK: There's no way I misread that note.

433 ADA: Did you ask Agent Grabelsky what happened when he and the others went into the
434 OTB?

435 KK: Yes. He said that Tomassi walked up to Bybel with a gun pointed and said: "show me
436 your safe." Agent Grabelsky and Zyrga covered a customer who happened to be Chet
437 Krupczyk. As soon as Krupczyk saw Agent Grabelsky, he started apologizing frantically
438 for not being able to pay back the \$5,000.00 that he owed. Before he could finish, Agent
439 Grabelsky told him to shut his mouth or he'd blow his head off. A few minutes later,
440 Tomassi returned with a duffle bag and said: "Let's get out of here." As Tomassi headed
441 for the door, he shot Krupczyk in the abdomen saying, "we don't need any
442 eyewitnesses." At that point, Agent Grabelsky headed out the door followed by Zyrga.
443 Grabelsky said he expected the OCTF to be all over them but they were nowhere in sight
444 as Tomassi was getting into the waiting car occupied by Sosay. Then, as Zyrga was

445 leaving the OTB parlor, a shot rang out from inside and Zyrnga fell to the ground,
446 dropping his gun. Agent Grabelsky ran back inside to find Krupczyk laying there bleeding
447 and nearly unconscious with a gun in his hand. Ever since Grabelsky braced him over the
448 \$5,000.00, he had taken to carrying a gun for protection. Before expiring, Krupczyk said:
449 "He didn't have to shoot me, I just needed a little more time." By that point, OCTF
450 arrived on the scene and converged on Zyrnga. Tomassi and Sosay were nowhere in sight.

451 ADA: Did you believe Agent Grabelsky's story?

452 KK: I believe that things probably went down in that parlor more or less as he described but
453 I wasn't sure what to believe about why things went so wrong that day. At least not until
454 I got the full story from Lyman Zyrnga.

455 ADA: How did that come about?

456 KK: We had filed a felony complaint charging Zyrnga with Felony murder, Burglary and Theft.
457 Several days later, just before the preliminary hearing, the ADA informed me that
458 Zyrnga's attorney had approached her and said that Zyrnga had some very interesting
459 information about Agent Grabelsky that he would provide if the right deal could be
460 reached.

461 ADA: So what happened?

462 KK: We all went to the DA's office where Zyrnga's attorney made a proffer of information and
463 then an agreement was reached whereby Zyrnga would waive his preliminary hearing,
464 waive immunity and testify in the grand jury against Agent Grabelsky, Kyser Sosay and
465 Rolo Tomassi in exchange for which he would be allowed to plead guilty pursuant to a
466 Common Pleas Court Complaint to First Degree Burglary and receive a sentence of 10
467 years in jail instead of being indicted for Felony Murder and facing a sentence of up to
468 25 years to life. Of course, he would have to testify against Grabelsky at trial and against
469 Tomassi and Sosay if they were ever apprehended.

470 ADA: So what did Zyrnga say about Agent Grabelsky's involvement in the OTB theft?

471 KK: He said that Agent Grabelsky had made it very clear that he believed that his father
472 killed himself because he was so distraught over his oldest son Ziggy's being sentenced
473 to 15 years in jail. Grabelsky also said that the OCTF never should have forced him to
474 squeeze his own brother whom he felt had gotten a much longer ride than he should
475 have because he was a stand-up guy. So when Rolo came up with the plan to do an
476 inside job at the OTB, Agent Grabelsky said he would do his part to make sure that they
477 got away with it and that Captain Kowalski and the OCTF ended up with egg on their
478 face.

479 ADA: What was it about Zyrnga's information that convinced you that Agent Grabelsky had
480 double-crossed the OCTF?

481 KK: Zyrnga informed me that, in late June 2018, Tomassi had informed all of them, including
482 Agent Grabelsky, that Luther Bybel would be at the 76th St. OTB branch to cover for

483 another employee who was planning to take the day off. Instead of telling me right
484 away of this change in location, Grabelsky waited to the last minute to leave me this
485 note. It was just a cover he used to make it look like he was keeping us informed. Plus,
486 the D.A. subpoenaed records from JetBlue Airlines and the Golden Nugget Hotel in Las
487 Vegas that corroborated Zyriga's information about Bybel's planning back in June 2018
488 to cover for the 76th Street OTB manager on July 13, 2018.

489 ADA: Were you expecting to hear from Agent Grabelsky at some point on July 14th?

490 KK: Yes. Since he refused to wear a wire, I told him to call me that day as early as possible to
491 verify that everything was still on for later that afternoon. When I didn't hear from him
492 by mid-afternoon, I started to get worried. Then, of course, I got that note and shot right
493 over to 19th Street.

494 ADA: When you interviewed Agent Grabelsky, what did he tell you about what happened on
495 July 13, 2018 regarding the location of the robbery?

496 KK: He said that Bybel had called Tomassi on the morning of July 14th to inform him that the
497 76th Street had called in sick and that he had to cover for him. Bybel said there would be
498 a lot of money there in the vault so they could go ahead with the plan. Tomassi was
499 concerned about the last-minute change so he directed everyone to stay together, just
500 in case.

501 ADA: So how did Grabelsky say he was able to get away later in the day?

502 KK: He said he told Tomassi that he was concerned based on Bybel's sudden change of plans
503 that Bybel was getting cold feet or maybe was setting them up so he wanted to go over
504 to the 76th Street OTB Branch ahead of time to make sure that he would actually be
505 there. Tomassi bought the story and Agent Grabelsky said he used that opportunity to
506 drop off the note.

507 ADA: At the time, did you believe that part of his story?

508 KK: I believed that he dropped off the note, but I couldn't understand why he didn't call me
509 and inform me of the change. Of course, after Zyriga came clean, it became clear that
510 this was all part of his plan to mislead us while appearing to keep us informed.

511 ADA: Speaking of Zyriga, after he provided this information, what investigative steps did you
512 take?

513 KK: The next day we executed a search warrant for Agent Grabelsky's apartment.

514 ADA: What, if anything, did you find there?

515 KK: In the top drawer of his bedroom nightstand we found a note to Agent Grabelsky from
516 his father. We also found some old photographs with handwritten captions on a page
517 that appeared to have been removed from a photo album.

518 ADA: Showing you Grand Jury exhibit three, can you identify this?

519 KK: Yes. That's the note that we found in the drawer. (Whereupon the note was read to the
520 Grand Jury.)

521 ADA: Showing you Grand Jury exhibit four, can you identify these items?

522 KK: Yes. These are the photos that were on the page that we found in Agent Grabelsky's
523 dresser drawer. (Whereupon the page of photographs was shown and the captions
524 were read to the Grand Jury.)

525 ADA: Do you recognize the handwriting under the photos?

526 KK: Yes. It's Agent Grabelsky's. (Whereupon the page of photographs was shown and the
527 captions were read to the Grand Jury.)

528 ADA: Getting back for a moment to July 13, 2018, what investigative steps did you take to
529 ascertain the movements and whereabouts of Tomassi and Sosay after the theft?

530 KK: We went to the Painted Bird Marina and interviewed Jerzy Kosinski and we checked
531 with Canadian authorities in Fort Erie and Toronto to see if anyone had spotted them or
532 the vehicle. Unfortunately, Kosinski acted like he didn't know what we were talking
533 about and there were no reports of any Tomassi or Sosay sightings on either side of the
534 Buffalo-Niagara River.

535 ADA: But didn't Agent Grabelsky tell you that their plan was to leave the country by crossing
536 the Buffalo-Niagara River in Kosinski's boat?

537 KK: That's what he told us but I suspect that this was just more misdirection on his part.

538 ADA: All right Captain. Those are all the questions I have. At this time, I'm going to excuse the
539 witness and read excerpts from Grand Jury exhibits five and six to the Grand Jury.
540 Starting with exhibit five which is a certified copy of the autopsy report of the Buffalo
541 Niagara Medical Examiner, Isadore Fershiznik, who states that the cause of death of
542 Luther Bybel was asphyxiation due to fracture of the hyoid bone. Grand Jury exhibit six
543 is a certified copy of an autopsy report of Dr. Fershiznik pertaining to Chester Krupczyk.
544 The report lists Mr. Krupczyk's cause of death as internal hemorrhaging secondary to
545 gunshot wound of the abdomen. That will conclude the proceedings for today.

546 ## END OF FILE ##