

Grand Jury Testimony of Lyman Zyrga
August 8, 2009

The witness first being duly sworn:

ADA: Mr. Zyrga, do you swear before this Grand Jury and in the presence of your attorney to waive immunity from prosecution in this investigation into the deaths of Chester Krupczyk and Luther Bybel in connection with the theft of in excess of two million dollars from the 76th Street OTB Parlor on July 15, 2009?

Lyman Zyrga (LZ): Yes, I do.

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

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

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

LZ: How far back do you want to go?

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

LZ: I'm 49 years old.

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

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

ADA: Sounds like a pretty eventful childhood.

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

ADA: How do you mean?

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

ADA: Such as?

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

ADA: Meaning what?

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

ADA: And if he didn't?

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

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

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

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

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

ADA: How well did you know Rolo Tomassi?

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

ADA: What did Rolo do for his father?

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

ADA: How do you mean?

LZ: He was very eager to learn all about the business but he was impetuous and unpredictable. While his father was much more laid back and low key, Rolo was less patient with the deadbeat debtors and far more aggressive and violent than his father would have liked.

ADA: Can you give an example?

LZ: Well there was this guy whose father used to work with Zeppo back in the day before he opened the tavern. The guy was behind in repaying a significant debt and he pleaded with Zeppo for more time pointing out how his father and he had been friends. Zeppo gave him an extension but the next day Rolo caught up to him and beat the living daylights out of the guy, saying "don't you ever take advantage of my father's good nature again. If you don't pay up, I'll kill you and

your old man.” Needless to say, the guy found the money and paid up sooner than Zeppo had expected.

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

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

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

LZ: Mostly debt collection.

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

LZ: Zeppo had always been sickly with diabetes. His drinking didn’t do much to help his condition either. In the late 1980’s, he got progressively worse. First he had his right leg amputated below the knee. Then he lost his vision and eventually his vital organs just shut down. Rolo was just devastated. His father was his biggest fan and he wanted in the worst way for his son to find success as an athlete. Unfortunately, fate stepped in and Rolo had to take over for his father. I remember Rolo saying at Zeppo’s funeral that he was going to step up the business, make a fortune and get out of town. He said, “I missed my chance after high school but I’ll be damned if I spend the rest of my life in the bar business here in Buffalo-Niagara.” So we all figured he was a short timer and we were all surprised that he stayed as long as he did.

ADA: So what did he do with the business?

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

ADA: How so?

LZ: As we made more and more money in the sports betting operation, he amped up the loan sharking end of things and made sure we got the word out that “no unpaid debt would go unpunished.” That was how we rolled. If somebody was a day late, we’d pay a visit and make him regret it big time. Eventually, mostly everybody found a way to pay up on time and the business grew by leaps and bounds. Plus, we also ratcheted up the drug dealing end of the business. Where Zeppo was always uncomfortable with the drugs, Rolo had no qualms about it whatsoever. Consequently, we were rolling in it hand over fist.

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

LZ: First of all, that term “White Russians” is what you guys in law enforcement called us. But yes, occasionally people would get pinched on drug weapons charges but nothing of any real significance until “Dim Ziggy” as I like to call him got busted for Assault.

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

LZ: Not for anything like that. I got arrested for felony drug possession in 1997. I remember “Captain Kowalski and the Keystone Kops” as we used to call the OCTF police, squeezed me real hard to roll over on Rolo Tomassi but I had no part of it. As it turned out, my lawyer got the evidence suppressed and the case got dismissed anyway.

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

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

ADA: How did Tomassi treat you after that?

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

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

LZ: It was in 2001. There was this deadbeat gambler, Wally Kantorski who owed Rolo just under \$10,000. He was a friend of Zeppo’s who played that card one too many times with Rolo. Finally, Rolo said “enough’s enough, old Walter needs to get the message that I’m not playing anymore.” So, Ziggy and I confronted him one night and gave him a beating like you wouldn’t believe. I punched him hard in the stomach and Ziggy started pistol whipping him until he looked like Rocky after the tenth round with Apollo Creed. But there was no reason to use a handgun because there were two of us and Wally was an old-timer anyway.

ADA: So how did Ziggy get caught?

LZ: As Ziggy was laying into Wally, I hear this guy’s voice saying, “Hey, what are you doing? Leave him alone!” Ziggy ran after the guy and I went for the car to pick up Ziggy after he took care of the witness. Unfortunately, the eyewitness got away and later picked Ziggy out of a photo array and Ziggy got busted. Using the handgun really made matters that much worse for him, I think. But that was Ziggy. Always trying to show off for Rolo. In my opinion, Ziggy got what he deserved for being so stupid and for not being able to catch the witness.

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

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

ADA: How’s that?

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

ADA: Why do you say that?

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

ADA: Do you know where they ended up?

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

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

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

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

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

ADA: How do you mean?

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

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

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

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

LZ: It was a Monday night in the fall of 2005 as I recall. We were hanging out at the bar watching football when out of the blue, in walks Agent Grabelsky. I remember commenting to Kyser Sosay at the time, "What's this, a one man raid"? Anyway, he sits down at the bar, orders a beer and he and Rolo started talking. Sometime later, this drunk guy who identified himself as Wally Kantorski, Jr. comes in and starts in on Tomassi about his father being put in the hospital over his overdue debt. He kept saying, "you could've called me. I would've taken care of it. Now my father's blind in one eye". He then pulled a knife out of his jacket. Sosay and I ran toward him but we were at the other end of the bar. The guy lunged at Rolo but all of a sudden, quick as lightning, Max Grabelsky grabbed the guy's arm and twisted it behind his back until he dropped the knife.

ADA: What happened then?

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

ADA: What did you do?

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

ADA: When did you see him again?

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

ADA: So what happened when Grabelsky came back?

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

ADA: What was he doing?

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

ADA: And how did Tomassi respond to that?

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

ADA: What did Grabelsky say in response?

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

ADA: How did Grabelsky respond?

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

ADA: And did he get back to him?

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

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

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

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

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

ADA: When was the location changed?

LZ: I remember it was right around the last week of June. Tomassi told us that Luther Bybel had just informed him that the manager of the 76th Street OTB branch, Harry Gondorff, told him (Bybel) that he (Gondorff) would need overage at his branch on Friday, July 15, 2009 because he had airline tickets and reservations in Las Vegas for a weekend gambling junket at the Golden Nugget Hotel. Bybel said that he expected to be assigned to the 76th Street branch because OTB had sent him there in the past whenever Gondorff was off.

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

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

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

LZ: Myself, Kyser Sosay, and Max Grabelsky.

ADA: Is there any doubt in your mind that Grabelsky was present for this conversation?

LZ: None whatsoever. In fact, I remember him asking Rolo how this affected our plans and Tomassi related Bybel's assurances about the money in the 76th Street vault.

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

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

ADA: What details was he talking about?

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

ADA: At any time between late June when Tomassi informed you all about the change in location and July 15, 2009, did Tomassi ever indicate that the plans to hit the 76th Street branch on July 15th were uncertain or subject to confirmation by Bybel?

LZ: No.

ADA: And, focusing specifically on July 15, 2009, do you have any knowledge of Luther Bybel's calling Rolo Tomassi that morning to report a last minute change in location from 19th Street to 76th Street?

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

ADA: So there were no meetings on the morning of July 15th where Tomassi informed you all of the change in location?

LZ: No.

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

LZ: The plan was that Sosay would wait for us in the car a few doors away and we would all walk in the 76th Street branch at around 4:35 p.m. which, according to Bybel, would be a quiet time because it was coming up on the dinner hour. Tomassi would escort Bybel in the back room where the vault was located, go inside and load up a duffle bag that Bybel made available. Grabelsky and I would watch any customers and cover the door while Tomassi was collecting the loot.

ADA: So what happened when you entered the OTB?

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

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

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

ADA: What happened after Tomassi shot Krupczyk?

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

ADA: Where was Tomassi at that point?

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

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

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

ADA: What about customs?

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

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

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

ADA: What about Grabelsky?

LZ: He said that in time he was going to work his way back to the states through Michigan and then eventually find his way over to Chicago. He said something about having a son there that he hadn't seen in quite awhile.

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

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

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

LZ: Like I said, he had always carried on about missed opportunities on account of his knee injury. He really believed that he could've become a major college football player and then a star in the NFL. He saw it as his ticket out of Buffalo-Niagara. Then, when he got injured, those

dreams went down the drain. But what really got him going was when he found out that he had diabetes. That's when he decided he needed to hit a big score and leave town.

ADA: What about Zeppos Tavern?

LZ: In early June, 2009, he transferred the business to his uncle who also happened to be his namesake. That way, anyone checking the records of the business would still see the name "Rolo Tomassi" as owner and operator.

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

LZ: Not a problem.