

Grand Jury Testimony of Max Grabelsky
August 10, 2009

The witness first being sworn:

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 15, 2009 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 15th. 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 15, 2009 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 in 1963.

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

MG: I'm single. I've been divorced since 2000.

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

MG: Actually, since the divorce it's just Denise Avogadro. And yes she resides in Chicago. After the divorce we had joint custody of Max, Jr. until I moved back to Buffalo-Niagara in 2004. And Max, Jr. lives on campus at the University of Chicago where he is a sophomore.

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

MG: Yes, I pay both because my ex is not working despite her expensive appetite for clothing, cosmetics, jewelry, and living the high-life, which I could never really afford. That and the fact that I spent so much time away from home working undercover caused our break-up. Plus, aside from what little financial aid Max gets from the University of Chicago, I'm responsible for covering our end of the bill, which amounts to \$28,000 a year. I have to take a loan to cover it.

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

MG: All together, I pay \$2,000 a month which I think is excessive, but the judge really stuck it to me in Family Court after a contentious hearing. That and the attorney's fees really put a drain on my finances.

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

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

ADA: What about mortgage or rent?

MG: Since returning to Buffalo-Niagara in 2004, I have been living in my parent's house which is paid off except for taxes which are about \$2,500 annually. So I've been lucky to be able to live there rent-free while my brother Ziggy was in jail and my dad was ill. Ziggy and I both inherited the house after our father died in 2007. Obviously, Ziggy no longer lives there since his arrest. So, my only obligation with respect to the home is the annual tax bill and maintenance.

ADA: Anything else?

MG: Anything else what?

ADA: Do you have any other expenses?

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

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

MG: Around \$16,000.

ADA: And your annual salary is around \$75,000?

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

ADA: Well, isn't it true that in June, 2009, Rolo Tomassi came up with a plan to steal over two million dollars from the OTB with the assistance of any inside man, Luther Bybel?

MG: Yes.

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

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

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

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

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

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

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

MG: According to Tomassi, the total, as told to him by Luther Bybel, was around 2.5 million dollars. The split was one million for Tomassi and a half-million each for Sosay, Zyrga, and myself.

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

MG: If you think I would jeopardize my career for a half-million dollars or for any amount of money for that matter, you couldn't be more wrong. You seem to be laboring under the false assumption that I was really in on this thing when, in fact, I kept my superiors at the OCTF informed of what was happening with Tomassi right from the day he asked me to come to work for him right up until an hour before the strike went down on July 15th. Besides, if I was in on this crime, where would I go with the whole world knowing that I got a half-million in a heist that resulted in the death of two people? It's ludicrous to even think that I was involved in any way other than an undercover agent doing my job.

ADA: Well, where did Tomassi and Sosay go?

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

ADA: And what about Sosay and Zyrga?

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

ADA: What did you tell them your plans were?

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

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

MG: Well, my father and his father both grew up on the east side. Before Zeppo Tomassi bought his tavern in the late 1950's my father and he worked together at the Buffalo-Niagara steel plant. After that, my father was a regular at Zeppo's.

ADA: By regular, you mean a frequent customer?

MG: Yes.

ADA: Did that include gambling?

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

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

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

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

MG: Yes. Ziggy and Tomassi went to grammar school together at Saint Casimir's and they both attended high school at Saint Stanislaus where Tomassi was the star quarterback and Ziggy was his left tackle. Tomassi was "All Buffalo-Niagara" and was being hotly recruited by several top tier colleges until he wrecked his knee in his senior year in 1978. It was the last game of the season and he got blindsided playing lacrosse. His father had always told him that playing lacrosse could jeopardize his football career and it turned out he was right. But Rolo wanted to letter in three varsity sports. He could have gone on to be a college star, maybe even gone pro, if not for the injury. Instead he stayed home and went to work for his father at the tavern.

ADA: And Ziggy, what about him?

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

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

MG: Yes.

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

MG: True.

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

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

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

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

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

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

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

MG: When I was a senior in high school in 1982, I knew that I wanted to go away to college and get a degree. I got a scholarship to Northwestern and go a dual degree in Criminal Justice and Sociology. After graduating from college in 1986, I joined the Marines and served in the Middle East. After being discharged from the Marines with a Medal of Honor for bravery, I applied and was accepted into the FBI Academy in Quantico Virginia in 1990.

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

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

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

MG: After several months of narcotics investigations, I was assigned to the Bureau's Organized Crime Division because there was a strong Eastern European organized crime presence in the Chicago area in the early 1990's and I was fluent in Russian. I went deep undercover and was able to infiltrate the EEOC (Eastern European Organized Crime) syndicate, which led to indictments and convictions of several EEOC kingpins on RICO, Conspiracy, Racketeering and other felony charges in the late 1990's.

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

MG: As a result of my work in the EEOC cases, I received a great offer to take on a supervisory position in the Washington, DC organized crime bureau, but my father took ill in 2004, so I put in for a transfer back home. My request was granted in 2004.

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

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

ADA: How did you respond?

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

ADA: What did you tell him?

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

ADA: How did your brother respond to that?

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

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

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

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

MG: Of course I do.

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

MG: Yes, he did.

ADA: and you felt that that was excessive, didn't you?

MG: I'll put it this way. As a member of law enforcement, I stand for what is right and for people paying for their crimes. But I also feel that the punishment should be proportionate to the crime. I have never heard of anyone with no prior felony convictions getting 15 years for Assault. I know that Ziggy got the long ride because Captain Kowalski persuaded the DA to push for the maximum because Kowalski was angry and frustrated over Ziggy's refusal to turn state's evidence against Tomassi. It was also clear to me that Captain Kowalski was obsessed with bringing down Tomassi. I remember when he asked me to work on Ziggy he said, "Your brother holds the key to Tomassi. If I get Tomassi, I'll be the next director of the State OCTF". So it was obvious that this was more about Captain Kowalski's career than doing the right thing for law enforcement. I also think Captain Kowalski was more than a little jealous of my success in Chicago. Truth be told, I didn't have a lot of respect for Captain Kowalski or for the OCTF under his leadership.

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

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

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

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

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

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

ADA: It's fair to say then that you believed that your brother got more than he deserved for this conviction?

MG: Yes.

ADA: So 15 years is too much time for a loanshark who pistol whips an old guy who can't pay back his debts. And by the way, you do know that the guy he beat up ended up with fractures of the eye sockets, cheek bones and nose, don't you?

MG: Yes, of course. I'm not saying that Ziggy should have been treated leniently for what he did. All I'm saying is that he got a lot more time because he was a stand-up guy and refused to roll over on Tomassi.

ADA: And you think he should be proud of that?

MG: Look, I've worked with informants for years. They are nothing more than criminals who rat on their own to save their own skin. I realize it's what makes prosecutions in these kinds of cases, but I have to say that I have more respect for the ones who keep their mouths shut and take their medicine rather than the self-serving rats who roll over on their families or friends. Ziggy refused to talk and he'll be paying for it for the next several years.

ADA: Sounds like you're bitter?

MG: Look at me. After serving my country and working in law enforcement putting my life on the line against the worst criminals, my brother's in jail, my father is dead, and I'm being accused of double crossing my fellow officers in a case where two people are dead, two major criminals have disappeared, and another crook has a sweetheart deal for saying whatever Captain Kowalski needed to hear so that they can make a case against me and make me take the fall for his colossal incompetence. It's enough to make your head spin, wouldn't you say?

ADA: So, to get back on track here, you were angry about your brother?

MG: Yes.

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

MG: Of course I was.

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

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

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

MG: Something like that.

ADA: And you knew that he stayed in jail from the day of his arrest because he was being held without bail on the DA's recommendation?

MG: Yes.

ADA: And you knew that Captain Kowalski urged the DA to recommend a no-bail status for your brother?

MG: Yes, I did.

ADA: So, in your mind, Captain Kowalski had a direct hand in your brother's not seeing the light of day, true?

MG: Yes.

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

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

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

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

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

MG: Absolutely.

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

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

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

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

ADA: So how did the opportunity present itself?

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

ADA: What did you do then?

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

ADA: How did you respond?

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

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

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

ADA: So what did you do?

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

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

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

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

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

ADA: Tell us about that.

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

ADA: So what happened?

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

ADA: What did you do then?

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

ADA: How did Krupczyk respond?

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

ADA: What happened after that?

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

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

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

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

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

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

MG: I never got the chance. Unfortunately, he disappeared for awhile and just happened to resurface at the time and place of the OTB theft on July 15, 2009.

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

MG: Yes. In June, 2009, he explained to me that there was this manager at the 19th Street OTB Parlor, Luther Bybel, who owed him hundreds of thousands of dollars. Bybel was not able to repay the debt, but told Tomassi that he could make the money "available for the taking" from the OTB Parlor. Bybel said that if Tomassi made it look like a robbery, he would come off as an innocent victim rather than an inside thief.

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

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

ADA: Who was present when he made this statement?

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

ADA: How did Zyrga and Sosay respond?

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

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

MG: Tomassi explained that we, meaning Kyser Sosay, Lyman Zyrga, and I would drive to the OTB Parlor at 111 19th Street on Friday, July 15 at 4:35 p.m. Bybel had told Tomassi that his clerk, Barbara, left every Friday at 4:30 p.m. to take her mother out for a fish fry. So, Bybel would be the only employee in the parlor at that time. We would go in, Tomassi would escort Bybel at gun point to the vault in the back room while Zyrga and I kept an eye on an customers who might be in the scene. Tomassi said that he would knock Bybel out to make it look like a

robbery. After he got the money and put it in a duffel bag, he'd walk out, we would follow and then we'd all join Sosay who would be waiting down the block in his Towne Car. We would then drive to the Painted Bird Marina where we'd split up the money. Tomassi's friend Jerry Kosinsky would then take us across the Buffalo-Niagara river in his boat, "Jerry's Girl", and we'd then take a car from Fort Erie to Toronto. After that, we'd split up and go our own ways.

ADA: Did you share this information with Captain Kowalski?

MG: Of course I did, chapter and verse.

ADA: What was the OCTF's counter plan?

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

ADA: What was the plan if they got away?

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

ADA: Were you wired for this crime?

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

ADA: Directing your attention to the morning of July 15, 2009, where were you and what was going on?

MG: The four of us were all hanging out in the back office of Zeppo's. At about 9:00 a.m., Tomassi got a call on his cell phone from Bybel. I heard Tomassi say, "You've got to be kidding, what do we do now"? After several minutes of conversation, Tomassi hung up and said, "change of plans". He explained that Bybel had gotten a call from the OTB personnel department that the manager of the OTB branch on 76th Street had called in sick that morning and that he would have to fill in at that location. He said this actually would look better for him because it would look less like an inside job at a branch that he was asked to cover unexpectedly at the last minute. He said, "money's money, right"? So Tomassi said, "same plan, different location".

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

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

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

MG: Yes.

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

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

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

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

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

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

ADA: How did Tomassi respond?

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

ADA: So what did you do?

MG: I drove by the OTB parlor on 76th Street and observed Bybel inside through the window. Then I was about to call Captain Kowalski on my cell phone when I realized that I had left the phone in Tomassi's office. So I drove over to the OCTF office. It was around 3:45 p.m. and I was concerned about the time so I ran over to Captain Kowalski's office. He was not at his desk, and his secretary was nowhere in sight. In fact, nobody was around that I could see. I didn't want to keep Tomassi waiting any longer so I wrote out his note in a hurry, stuffed it in an envelope marked "urgent" to Captain Kowalski and left it on his desk. I then ran out and hussled it back over to Zeppo's.

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

MG: That's correct.

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

MG: Yes.

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

MG: Correct.

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

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

ADA: No mistaking what it says, is there?

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

ADA: And again, you were in a hurry?

MG: That's what I said.

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

MG: Yes, it is.

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

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

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

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

ADA: And this first word is what?

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

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

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

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

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

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

MG: I assumed that he would.

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

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

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

MG: Of course.

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

MG: Yes.

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

MG: Yes.

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

MG: And responding appropriately, yes..

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

MG: Yes, that's true.

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

MG: No, I did not.

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

MG: Correct.

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

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

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

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

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

MG: I beg your pardon?

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

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

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

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

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

MG: Yes, I am.

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

MG: Yes.

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

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

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

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

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

MG: Yes.

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

MG: Of course.

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

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

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

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

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

MG: Yes.

ADA: Do you think this is clear and unambiguous?

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

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

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

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

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

ADA: Mr. Grabelsky, isn't it a fact that you all knew weeks before July 15th that Bybel would be at the 76th Street branch on that day and that you concocted this last-minute "change of plans" story to cover your tracks?

MG: No.

ADA: Isn't it a fact that you were present with Lyman Zyrga and Kyser Sosay in the latter part of June when Tomassi informed you all that Bybel would be covering for the 76th Street manager who had plans to be out of town on July 15th?

MG: I don't know what you're talking about. The first time Tomassi mentioned 76th Street was on the morning of July 15th.

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

MG: Yes.

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

MG: Well, we never got the chance to tell Krupczyk because he disappeared and I seriously doubted that he could have been able to come up with that kind of money anyway unless he hit the jackpot which, to my knowledge, he never did. But as luck would have it, the day he decided to resurface is the same day we walked into that OTB parlor where he was at the window placing a bet.

ADA: Another curious coincidence?

MG: It is what it is.

ADA: So what happened when you all walked in?

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

ADA: And what did you say?

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

ADA: Where was Tomassi while this was taking place?

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

ADA: What were you doing in the meantime?

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

ADA: Did Tomassi eventually return from the back room?

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

ADA: What did you do?

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

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

MG: Yes.

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

MG: Yes.

ADA: Yes another strange coincidence?

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

ADA: So after Tomassi exited, you followed him?

MG: Yes.

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

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

ADA: Where was Tomassi at this point?

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

ADA: What about Krupczyk?

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

ADA: What did you do?

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

ADA: Did he say anything?

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

ADA: What happened then?

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

ADA: What did Captain Kowalski say?

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

ADA: How did he respond?

MG: He directed his crew to go inside. Krupczyk, as it turned out, was dead. Shortly after that several officers came out and said, "Captain, you've got to see this". Captain Kowalski headed inside and I started to follow and he said, "No, you stay here". He then directed other officers to take my weapon and keep me under guard.

ADA: What happened next?

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

ADA: How did you respond?

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

ADA: What did he say?

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

ADA: What happened then?

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

ADA: What happened then?

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

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

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

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

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

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

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

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

MG: Yes.

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

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

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

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

ADA: Thank you. I have no further questions.