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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, : CR-01-56
:
v. : U.S. Courthouse
:
JOHN DeROSS and :
6 ANTHONY SAINATO, :
Defendants. : TRANSCRIPT OF TRIAL
:
: January 28, 2002
-----X 9 o'clock a.m.

BEFORE:

HONORABLE REENA RAGGI, U.S.D.J.
and a Jury.

APPEARANCES:

For the Government: ALAN VINEGRAD,
United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201
BY: AMY WALSH,
NOAH PERLMAN,
DAN DORSKY,
Assistant U.S. Attorneys

For the Defendants

John DeRoss - PAUL LeMOLE, ESQ.
Anthony Sainato - DALE L. SMITH, ESQ.

Court Reporter: Mickey Brymer, RPR
Official Court Reporter
United States District Court
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Brooklyn, New York 11201
(718) 260-2439

Proceedings recorded by mechanical stenography.
Transcript produced by Computer-Assisted Transcription.

M. BRYMER, RPR, OCR

Salerno - recross/ Smith

8 THE COURT: Thank you. Mr. Smith.

9 Mr. SMITH: Yes, Your Honor.

10 Thank you.

11 CROSS-EXAMINATION

12 BY MR. SMITH:

13 Q. Good day.

14 When was your first loanshark transaction with Sam?

15 A. I believe in the late 70s.

16 Q. How much did you borrow?

17 A. I believe it was around 5 or then \$10,000.

18 Q. What was the interest?

19 A. One percent per week.

20 Q. Now, when you first had this agreement with him he made
21 it known to you that he was associated with organized crime,
22 right?

23 A. Yes.

24 Q. And you understood that to mean if you didn't repay the
25 money some kind of harm would come to you, right?

MARSHA DIAMOND, C.S.R., OFFICIAL COURT REPORTER

Salerno - recross/ Smith

- 1 A. Yes.
- 2 Q. And when was the second time that you borrowed money from
3 him?
- 4 A. I don't remember the exact time.
- 5 Q. How much did you borrow the second time?
- 6 A. I don't remember the figures.
- 7 Q. Now, you said you borrowed money from him half a dozen
8 times, right?
- 9 A. Yes.
- 10 Q. And you repaid it each time?
- 11 A. Yes.
- 12 Q. And each time the transaction involved an exorbitant rate
13 of interest, right?
- 14 A. It was usually the same amount of interest.
- 15 Q. Now, would you say that the six times that you borrowed
16 money from him they pretty much had -- you were pretty much
17 the same kind of consistent transaction, right?
- 18 A. Yes.
- 19 Q. And the interest rate was the same?
- 20 A. Yes.
- 21 Q. And you made weekly payments?
- 22 A. Yes.
- 23 Q. And when you borrowed money from him did you see yourself
24 as an associate of organized crime?
- 25 A. No.

Salerno - recross/ Smith

1 Q. When you borrowed money from Sam did you see yourself as
2 a member of organized crime?

3 A. No.

4 Q. All right.

5 Now, you said that each time your loanshark
6 transaction followed a particular pattern, right?

7 A. Yes.

8 Q. And each time there was a loan amount, right?

9 A. Well, it depended on what I borrowed.

10 MS: WALSH: May I, Your Honor?

11 THE COURT: Yes, of course.

12 Mr. SMITH: Can I have the witness come down so he can

13 --

14 THE COURT: Yes. If you want to move, Mr. Lemole, you
15 may do so.

16 (Witness complied.)

17 Q. There was a large amount?

18 A. Yes.

19 Q. There was also an interest rate?

20 A. Yes.

21 Q. Do you know the interest rates by any other term?

22 A. No.

23 Q. What about vig V-I-G or juice or points?

24 A. Points. Points.

25 THE COURT: You are not a witness, Mr. Smith, and you

Salerno - recross/ Smith

1 are writing things down here that the witness is not saying,
2 so I am going to ask you to abandon that approach.

3 Mr. SMITH: No, Your Honor, he said points. I am
4 writing points.

5 THE COURT: The point is the witness is on the stand
6 to testify, the reporter is to take it down. We have no need
7 of this. Let us move on.

8 Q. You also had a payment schedule, right, that you had to
9 make your payments?

10 A. I don't understand what you're trying to --

11 Q. You borrowed money from Sam?

12 A. Yes.

13 Q. It was a particular rate of interest?

14 A. Yes.

15 Q. You are required to pay it back?

16 A. Yes.

17 Q. He told you when you had to pay it back?

18 A. When? If he gave the money on a Monday, next Monday I
19 would give him the interest and any principle that I was able
20 to give him back.

21 Q. And it was usually on a weekly basis, right?

22 A. Yes.

23 Q. But he was the one that determined when you had to pay,
24 right?

25 A. Well, it was an understanding if he gave me the money on

Salerno - recross/ Smith

1 a Monday or a Tuesday, whatever day he gave it to me, a week
2 later on that same day I would give him the interest plus
3 whatever principle I was able to pay back.

4 Q. Did you know the reduction of principle, what that was
5 called?

6 Is that called a knock-down?

7 A. No. I just -- whatever interest I paid, if I gave money
8 towards the principle I would deduct that and then recompute
9 the interest.

10 Q. Now, you kept records, I think you referred to 1.9? Do
11 you have 1.9 in front of you, Exhibit 1.9?

12 A. No, I have --

13 Q. What is that document (handing)?

14 A. This is a ledger sheet that has my handwriting on it and
15 Bill Cutola's on it.

16 Q. Is that a ledger -- does that ledger sheet reflect your
17 loanshark payments to Bill Cutolo?

18 A. Yes, some of them, yes.

19 Q. And in fact, there is an entry that says half, one half?

20 A. Yes, on the top. Right.

21 Q. Does that entry reflect the interest payment that you
22 made for the loanshark?

23 A. The interest on this part of the loan, yes.

24 Q. Now, when did you start borrowing money from Cutola?

25 A. Early 90s.

Salerno - recross/ Smith

1 Q. Now, did he make you aware that he was somehow involved
2 -- associated with organized crime?

3 A. I -- I -- I knew it from years before.

4 Q. Did you feel that if you didn't repay the money to
5 Bill Cutolo somehow harm would come to you?

6 MR. LEMOLE: Objection.

7 THE COURT: No. I'll allow it.

8 A. Yes.

9 Q. In fact, you were afraid of Bill Cutolo, right?

10 A. Yes.

11 Q. In fact, even after your agreement with him and you came
12 to an understanding with him, he changed the terms of the
13 agreement, right?

14 A. Yes, he tried to change it, yes.

15 Q. Well, didn't he actually change it?

16 A. Well, I said he tried to change it.

17 Q. Didn't you increase your payments to him?

18 A. Yes, I increased the payments, yes.

19 Q. At his request, right?

20 A. Yes.

21 Q. And in fact, he threatened you with death if you didn't
22 make those payments, right?

23 A. Yes.

24 Q. And this was what, December or --

25 A. December.

Salerno - recross/ Smith

1 Q. New Year's Eve about 1997?

2 A. About December 1997.

3 Q. Did you view yourself as a partner of Bill Cutolo?

4 A. No, I was never a partner.

5 Q. Did you view yourself as a member of the Colombo crime
6 family?

7 A. No.

8 Q. Did you view yourself as an associate of the Colombo
9 crime family?

10 A. No.

11 Q. Did you view yourself as a having anything to do -- as a
12 participant in the crimes of the Colombo crime family?

13 MR. LEMOLE: Objection.

14 THE COURT: Overruled.

15 A. Could you --

16 Mr. SMITH: May I ask to have the record read back?

17 THE COURT: Yes.

18 (Record read.)

19 A. No, I had nothing to do would it.

20 Q. In fact, you viewed yourself as a victim of Bill Cutolo,
21 right?

22 THE COURT: Overruled.

23 A. Yes.

24 Q. In fact, he loaned money to you at on or about standard
25 rates of interest, right?

Salerno - recross/ Smith

1 A. Well, the only deal I had with him was I felt was fair
2 rate for my circumstances at the time because the half point,
3 when you figure it out, on the \$965,000 was roughly 13 percent
4 interest, and there are companies out there that lend out
5 money at higher rates. And also, take what they call an
6 equity kicker in your deal, and this was a similar situation
7 where I borrowed the money, and part of my deal was to give
8 him ten percent of the net profits after the loan was paid
9 off.

10 Q. Do any of the companies that lend money out with a
11 kicker, do they have anyone that's involved with organized
12 crime?

13 A. No.

14 Q. Any of them threaten you with death --

15 A. No.

16 Q. -- if you don't pay the money?

17 A. No.

18 Q. So that is the difference between Bill Cutolo and those
19 kinds of companies, right?

20 A. Yes.

21 Q. So it must have been surprising to you when you were
22 actually told that you were being charged with racketeering,
23 right?

24 A. Yes.

25 Q. In fact, someone was telling you that you were a

Salerno - recross/ Smith

1 participant with the Colombo crime family in organized crime,
2 right?

3 A. Yes.

4 Q. And you didn't believe that to be true at all, right?

5 A. Right, yes.

6 Q. You still don't believe that to be true today, right?

7 A. Yes.

8 Q. And once again, you see yourself as a victim, right?

9 A. Yes.

10 Q. Now, your lawyer, did he or she explain to you where you
11 went wrong, sir?

12 A. Yes.

13 Q. In fact, did you have an understanding that you were
14 actually borrowing money from Bill Cutolo and Sam at
15 exorbitant rates of interest did not make you a participant in
16 the crimes of the Colombo crime family, didn't you?

17 MR. LEMOLE: Objection.

18 THE COURT: Sustained.

19 Q. Of course, it was explained to you that part of where you
20 went wrong in terms of laundering money was to actually give
21 Bill Cutola a no-show job?

22 MR. LEMOLE: Objection.

23 THE COURT: Sustained as to form.

24 Q. You pled guilty to money laundering, right?

25 A. Yes.

Salerno - recross/ Smith

1 Q. And you had to admit to the Court what it is that you did
2 wrong, right?

3 A. Yes.

4 Q. And part of what you admitted was to allowing Bill Cutolo
5 to be paid from the payroll of Embassy Terrace for a no-show
6 job, did you admit to that?

7 A. Yes.

8 Q. Did you admit to paying his wife money for what was
9 essentially a no-show job?

10 A. Yes.

11 Q. Did you admit to writing a check to Hoffman Koos for
12 furniture that was going to Bill Cutolo's house?

13 A. Yes.

14 Q. Did you admit to writing two checks for \$50,000 each that
15 went to the construction of Bill Cutolo's house?

16 A. Yes.

17 Q. And that is what you did wrong as it relates to the money
18 laundering, right?

19 A. That, plus taking the money from Bill knowing that he got
20 it from organized crime source, you know, organized crime
21 activity, also.

22 MR. LEMOLE: Objection.

23 THE COURT: Overruled.

24 Q. But you understand the essence of what you did wrong was
25 to try and conceal that it came from Bill, those activities,

Salerno - recross/ Smith

- 1 right?
- 2 A. Yes.
- 3 Q. Now, you refer to a conversation you had with
- 4 Anthony Sainato, right?
- 5 A. Yes.
- 6 Q. You said that he was complaining about Bill Cutolo?
- 7 A. Yes, we both were.
- 8 Q. You at the time you had this conversation with him had an
- 9 understanding of what he meant, right?
- 10 A. Yes.
- 11 Q. And in fact, your understanding was that he had borrowed
- 12 money from Bill Cutolo, right?
- 13 A. Yes.
- 14 Q. And you knew Bill Cutolo to be a loanshark, right?
- 15 A. Yes.
- 16 Q. And he was complaining about Bill Cutolo's loansharking
- 17 activity as it related to him, right?
- 18 A. Yes.
- 19 Q. He wasn't complaining about anything else, was he?
- 20 A. Well, about how Bill was, you know, trying to always be
- 21 on top of him all the time.
- 22 Q. Right. Trying to change a deal very much like he changed
- 23 it with you, right?
- 24 A. Change the deal and impose upon his business, running of
- 25 his business.

Salerno - recross/ Smith

1 Q. Now, you met with Anthony Sainato several times, right,
2 and you got to know him?

3 A. Yes.

4 Q. And did you think he was the kind of guy that could stand
5 up to Bill Cutolo?

6 A. No.

7 Q. Were you the type of guy that could stand up to
8 Bill Cutolo?

9 A. No.

10 Q. In fact, you really hated him, didn't you?

11 A. Yes.

12 Q. And in fact, your own place of business, you didn't even
13 want to go into that place of business if you knew Bill Cutolo
14 was there, right?

15 A. Yes.

16 Q. In fact, at one point you even thought about killing him,
17 right?

18 A. The thought passed my mind but I couldn't contemplate
19 doing something like that.

20 Mr. SMITH: Can I have one minute please, Your Honor?

21 THE COURT: Yes.

22 MR. SMITH: With the Court's permission I will
23 approach the witness.

24 Q. Sir, I am showing you Government Exhibit 7.2. You may
25 take a look at it.

Salerno - recross/ Smith

- 1 A. Yes.
- 2 Q. Does your name appear anywhere on that list?
- 3 A. I don't see my name on this one, no.
- 4 Q. And look at 7.2 again, and tell me if Anthony Sainato's
5 name appears on that list?
- 6 A. No, I don't see it.
- 7 Q. Look at 7.3 and tell me if your name or Anthony Sainato's
8 name appears on 7.3?
- 9 A. No, I don't see the name on this page.
- 10 Q. And look now on 7.4. See if your name or
11 Anthony Sainato's name appears on 7.4.
- 12 A. No, I don't see it either.
- 13 Q. Now, sir, you pled guilty to racketeering, did you plead
14 guilty to racketeering?
- 15 A. Loanshark.
- 16 Q. Okay, loansharking. You were charged in a racketeering
17 indictment?
- 18 A. Yes.
- 19 Q. Based on your conversations with your lawyer you had an
20 understanding as to your maximum exposure, right?
- 21 A. Yes.
- 22 Q. And you were told that you were facing 20 years in prison
23 for racketeering, right?
- 24 A. Yes.
- 25 Q. But as you sit here today you still don't view yourself

Salerno - recross/ Smith

1 as a member of the Colombo crime family, right?

2 A. Yes.

3 Q. So as you sit here today you don't view yourself as an
4 associate of the Colombo crime family, right?

5 A. Yes.

6 Q. And as you sit here today you don't view yourself as a
7 participant in the crimes of the Colombo crime family, right?

8 A. Yes, to a certain extent, yes.

9 Q. And you view yourself as a victim, right?

10 A. Yes.

11 Q. And as far as you know, the only thing that you know
12 about Anthony Sainato was, in fact, he was a victim of
13 Bill Cutolo's loansharking, right?

14 A. That's what I understand, yes.

15 Mr. SMITH: Thank you, sir.

16 THE COURT: Redirect.