

J5N7CAS1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 15 (AKH)

5 EUGENE CASTELLE,

6 Defendant.

TRIAL

7 -----x
8 New York, N.Y.
9 May 23, 2019
10:15 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge
13 -and a jury-

14 APPEARANCES

15
16 GEOFFREY S. BERMAN,
17 United States Attorney for the
18 Southern District of New York

19 HAGAN C. SCOTTEN
20 JACOB R. FIDDELMAN
Assistant United States Attorneys

21 GERALD J. McMAHON
22 Attorney for Defendant

23 ALSO PRESENT: DARCI BRADY, Paralegal Specialist
24 CASSANDRA WILLIAMS, Paralegal
25

Pennisi - cross

1 THE COURT: Is that satisfactory to both sides?

2 MR. SCOTTEN: Yes, Judge.

3 THE COURT: OK. All right. Before we bring in the
4 jury, I need a moment of personal convenience.

5 (Recess)

6 (Jury present)

7 THE COURT: Mr. Pennisi, you remain under oath. And
8 Mr. McMahon will begin his cross-examination.

9 MR. McMAHON: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. McMAHON:

12 Q. Mr. Pennisi, testifying in a courtroom from a witness chair
13 is not unfamiliar to you; is that correct?

14 A. I have in 1990.

15 Q. And when you testified on that occasion, you were under
16 oath?

17 A. Correct.

18 Q. And you walked into a courtroom and you raised your right
19 hand and you swore to tell the truth under penalty of perjury?

20 A. Correct.

21 Q. Same kind of oath that you took here last Thursday?

22 A. Yes.

23 Q. And you then proceeded to lie and lie and lie; is that
24 correct?

25 A. I told one lie.

Pennisi - cross

1 Q. You told one lie eight times?

2 A. Excuse me?

3 Q. You told that one lie eight times?

4 A. I don't -- I don't remember that.

5 Q. But it was a pretty crucial lie, wasn't it?

6 A. Correct.

7 Q. And you lied to protect yourself; is that right?

8 A. Correct.

9 Q. Now, when you did that, I assumed that you prepared
10 yourself to come into court and lie, did you not?

11 A. I prepared myself? No. I don't know what you mean by
12 that.

13 Q. Well, did you -- before the trial started --

14 THE COURT: Did you anticipate the questions being
15 asked and how you would answer them?

16 A. Yes.

17 Q. Did you rehearse your lie?

18 THE COURT: I think we got it, Mr. McMahon.

19 Move on.

20 Q. Despite that false testimony, you were convicted; is that
21 right?

22 A. Yes.

23 Q. Of a very serious crime?

24 A. Correct.

25 Q. And you did 17 years in jail?

Pennisi - cross

1 A. Correct.

2 Q. And you got out of jail around 2007?

3 A. Correct.

4 Q. Now, before going to jail, you testified that you had --
5 you were again a Gambino associate; is that right?

6 A. Correct.

7 Q. You grew up in the neighborhood in Queens, Ozone Park,
8 Howard Beach, where there were a lot of Gambinos active; is
9 that correct?

10 A. I didn't hear what you said.

11 (Continued on next page)

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Pennisi - Cross

1 BY MR. MCMAHON:

2 Q. There were a lot of Gambinos --

3 THE COURT: There were a lot of Gambinos in your
4 neighborhood.

5 A. You said active.

6 Q. Yes.

7 A. Yes.

8 Q. Now, you said, however, when you got out of prison that you
9 drifted away from the Mafia.

10 A. I went to work.

11 Q. But did you drift away from the Mafia?

12 A. I went to work.

13 THE COURT: Can you answer the question directly?

14 A. When you say drifted away, meaning I stood away, yes.

15 Q. Well, did you make a decision when you got out of prison
16 that you didn't want to be a Mafia associate anymore?

17 A. Yes.

18 Q. And before you had gone to prison, you had been very
19 friendly with John Gotti, Jr.; is that right?

20 A. Yes.

21 Q. And when you got out of prison, you didn't want to hang
22 around anymore with John Gotti, Jr.; is that right?

23 A. Correct.

24 Q. And that's because you thought he was cooperating?

25 A. Amongst other things, correct.

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Pennisi - Cross

1 Q. OK. So your drifting away from the Gambinos was not so
2 much because you wanted to go on the straight and narrow but
3 because you thought John Gotti, Jr. was maybe a rat.

4 A. Incorrect.

5 Q. Did you think he was maybe cooperating?

6 A. Can I answer your question?

7 Q. You may.

8 A. My not having anything to do with them anymore was a
9 decision that I made when I was getting out. I just wanted to
10 go to work.

11 Q. But it wasn't very long thereafter that you became
12 associated with the Lucchese family, according to your
13 testimony.

14 A. It was several years later.

15 Q. And you became very active --

16 THE COURT: Let's get a time period. You got out of
17 jail when?

18 THE WITNESS: 2007.

19 THE COURT: And you started working with the Luccheses
20 when?

21 THE WITNESS: 2012.

22 THE COURT: Five years later.

23 THE WITNESS: Correct.

24 Q. And so you didn't commit any crimes between 2007 and 2012?

25 A. No.

J5S7CAS2

Pennisi - Cross

1 Q. No, you're not saying that, or, no, you didn't commit any
2 crimes?

3 A. No, I didn't commit any crimes.

4 Q. And then something drew you back into the life of crime.

5 A. Like I explained on Thursday, there was an incident that
6 took place.

7 Q. At the Pearl Room.

8 A. Correct.

9 Q. And you beat up some guys, you and Anthony Guzzo?

10 A. Correct.

11 Q. And these guys were maybe Colombo, so you needed
12 protection.

13 A. Yes.

14 Q. But if you were a legitimate working guy and you needed
15 protection, why didn't you go to the police?

16 A. Because I was just -- I grew up not going to the police.

17 Q. So, you were legitimate and you were a working guy, but you
18 weren't that legitimate.

19 THE COURT: Objection sustained. Mr. Scotten was
20 drinking water. Object?

21 MR. SCOTTEN: Objection.

22 THE COURT: Sustained.

23 Q. So, because you go and get some protection against these
24 Colombo guys, voila, you're back into the life; is that right?

25 A. Define voila.

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Pennisi - Cross

1 THE COURT: It shouldn't be in the question. Redo
2 your question.

3 MR. MCMAHON: I will. That's a very well-taken point.
4 Q. You're out, hard working guy, legitimate job five years,
5 staying away from the Mafia, you have a little altercation in a
6 restaurant, and just like that you start back in the life of --

7 THE COURT: So why was it after five years of honest
8 work you decided to join Lucchese?

9 THE WITNESS: You don't decide to join. I went to a
10 friend of mine to help me with that situation with these guys.

11 THE COURT: Well, by going to a friend, you went for
12 the purpose of getting protection from Lucchese.

13 THE WITNESS: Correct.

14 THE COURT: And getting protection from Lucchese means
15 you are going to become associated with them.

16 THE WITNESS: Correct.

17 Q. And so that was a decision that you consciously made.

18 A. Yeah, definitely.

19 Q. Now, I'd like to go back for a few minutes on some of the
20 crimes that you committed in your life. How old are you, by
21 the way?

22 A. I'm 49.

23 Q. Would it be fair to say that your career of violent crime
24 started when you were in high school?

25 A. Correct.

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Pennisi - Cross

1 Q. And you beat somebody pretty good with an axe handle?

2 A. Correct.

3 Q. Did you beat him bloody?

4 A. I don't --

5 Q. You don't remember?

6 A. I don't -- I don't remember.

7 Q. Well, when you were hitting him with the axe handle on the
8 head, did you see blood coming out?

9 MR. SCOTTEN: Objection.

10 THE COURT: Sustained.

11 Q. Now, you have developed a reputation, have you not, Mr.
12 Pennisi, of being pretty good with your fists?

13 A. I don't know about that.

14 Q. You don't know if you're a tough guy with your fists?

15 A. I mean I can handle myself, but I don't know about
16 developed a reputation.

17 Q. You had a lot of fights in 17 years in prison?

18 A. Correct.

19 Q. And you won most if not all of them?

20 A. I guess so, yes.

21 Q. That would make you a tough guy with your fists.

22 THE COURT: Sustained.

23 Q. Now, amongst your other criminal activity was loan
24 sharking; is that right?

25 A. Yes.

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Pennisi - Cross

1 Q. And that's where you lend out money to people who can't go
2 to a bank to get a loan, and they pay high interest.

3 A. Yes.

4 Q. Really high interest.

5 A. Yes.

6 Q. Now, I think you said that you lent out about maybe
7 \$27,000?

8 A. Correct.

9 Q. And that was basically money that you got from criminal
10 activity?

11 A. No.

12 Q. Where did you get that 27?

13 A. I inherited some of it when my grandma passed away.

14 Q. So you took money from your grandmother's estate and you
15 lent it on the street.

16 THE COURT: No, he said inherited, so it's no longer
17 in the estate. Once you inherit it, it goes out of the estate
18 and goes into his estate.

19 MR. MCMAHON: Judge, not being a trust attorney, I
20 don't know these terms.

21 Q. Anyway, you inherit it from your grandmother and you lent
22 it out.

23 THE COURT: What year are we talking about?

24 THE WITNESS: Somewhere after 2013.

25 Q. And it was three percent?

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Pennisi - Cross

1 A. Or less.

2 Q. I think three percent was the figure that you mentioned on
3 direct examination.

4 A. Yes, but there was times that I lowered it.

5 THE COURT: That's three percent per day.

6 THE WITNESS: No, no, per week.

7 THE COURT: Per week.

8 THE WITNESS: Per week.

9 THE COURT: So, to get an annual you have to multiply
10 by 50.

11 THE WITNESS: Correct.

12 THE COURT: So, if you are charging three percent
13 interest a week that means 150 percent interest a year.

14 THE WITNESS: Correct.

15 Q. So, if you had 27,000 out on the street at three percent,
16 you are getting back \$810 a week interest only; is that
17 correct?

18 A. Correct.

19 Q. And so that \$810 a week, that doesn't reduce any of the
20 principal; that's just interest.

21 A. Correct.

22 Q. That's a nice weekly wage.

23 THE COURT: Sustained.

24 Q. And people knew to pay you because you had a reputation for
25 being a tough guy.

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Pennisi - Cross

1 A. Incorrect.

2 Q. Did people pay you?

3 A. Correct.

4 Q. Did you have to wave a tire iron over their head?

5 A. No.

6 Q. Did you have to put a pistol in their ear?

7 A. No.

8 Q. They knew to pay you.

9 A. Correct.

10 THE COURT: When were these debts payable?

11 THE WITNESS: Every Friday.

12 Q. Now, you have at various times in your life of violence
13 possessed guns.

14 MR. SCOTTEN: Objection.

15 THE COURT: Sustained.

16 Q. You have at various times in your criminal career possessed
17 guns.

18 A. Correct.

19 Q. What kind of guns do you generally -- did you generally
20 possess?

21 A. What kind?

22 Q. Yeah.

23 A. Handgun.

24 Q. What kind of handgun?

25 A. I don't -- .25.

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Pennisi - Cross

- 1 Q. Anything else?
- 2 A. A nine millimeter.
- 3 Q. Anything else?
- 4 A. .380.
- 5 Q. Anything else?
- 6 A. No.
- 7 Q. Were you a good shooter?
- 8 A. Was I a good shooter?
- 9 Q. Yeah.
- 10 A. I don't know.
- 11 Q. Well, did you ever practice shooting?
- 12 A. I did not.
- 13 Q. Did you ever shoot anybody?
- 14 MR. SCOTTEN: Objection.
- 15 THE COURT: Sustained.
- 16 Q. In connection with this business.
- 17 THE COURT: Sustained.
- 18 Q. Now, in terms of some of your assaults, is it true that you
- 19 once knocked out a boxer outside a restaurant?
- 20 A. Correct.
- 21 Q. Was it a one punch KO?
- 22 A. Correct.
- 23 Q. Out cold?
- 24 A. Correct.
- 25 Q. Now, amongst the other crimes that you committed, you also

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Pennisi - Cross

1 agreed with some of the people in the Lucchese family,
2 according to your testimony, that you would kill the Bronx crew
3 if it came to that.

4 A. Correct.

5 Q. So you basically agreed to kill six to eight people.

6 A. Correct.

7 Q. Fathers and sons.

8 MR. SCOTTEN: Objection.

9 THE COURT: Sustained.

10 Q. Well, part of the crew was Santorelli and his sons?

11 THE COURT: He agreed to kill six people.

12 MR. MCMAHON: Can I ask him, Judge?

13 THE COURT: As part of what kind of transaction?

14 THE WITNESS: There was a transition in the
15 leadership.

16 THE COURT: And what happened?

17 THE WITNESS: It went smoothly.

18 THE COURT: Pardon?

19 THE WITNESS: It went smoothly.

20 THE COURT: Yeah, but in the context, did you make a
21 promise?

22 THE WITNESS: I was asked if it didn't go smoothly if
23 I would participate in helping make that transition.

24 THE COURT: With a gun.

25 THE WITNESS: There was no discussion of guns, but I

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Pennisi - Cross

1 said -- they said we know we can count on you, and I said yes.

2 THE COURT: And you thought that could mean killing
3 somebody.

4 THE WITNESS: Correct.

5 Q. Killing multiple people.

6 A. Correct.

7 Q. Now, it is also true, Mr. Pennisi, that you know of no
8 violence associated with Eugene Castelle.

9 A. No.

10 Q. No what?

11 A. No violence.

12 Q. OK. So in contrast to your very illustrious career --

13 THE COURT: Objection sustained. Objection sustained.
14 We're not comparing issues of guilt. You're running a case
15 having to do with whether or not the government can prove
16 beyond a reasonable doubt the guilt of Mr. Castelle and crimes
17 charged against him.

18 MR. MCMAHON: Very well, your Honor.

19 Q. You do know that Mr. Castelle was a big gambler.

20 A. Correct.

21 Q. You do know he has young twins.

22 A. Correct.

23 MR. SCOTTEN: Objection.

24 THE COURT: Too late.

25 Q. Now, you testified on Thursday -- in fact it was near the

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Pennisi - Cross

1 end of the day -- about you were worried about your young
2 daughter getting caught in a crossfire because you thought that
3 some mobsters were maybe trying to kill you; is that right?

4 A. Correct.

5 Q. And you had custody of her every other weekend?

6 A. Correct.

7 Q. Now, is it in fact true that there was an order of
8 protection against you, Mr. Pennisi?

9 MR. SCOTTEN: Objection.

10 THE COURT: Sustained.

11 Q. Did you in fact have to pick her up at the police station?

12 MR. SCOTTEN: Objection.

13 THE COURT: Sustained.

14 MR. SCOTTEN: Can we have a sidebar, your Honor?

15 THE COURT: Yes.

16 (Continued on next page)

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Pennisi - Cross

1 (In open court)

2 BY MR. MCMAHON:

3 Q. Now, you went into the F.B.I. on October 1, 2018; is that
4 right?

5 A. Sometime in October.

6 Q. And between October 1st, 2018 and last Thursday when you
7 testified here in court, can you tell the jury how many times
8 you met with the prosecutors and agents to discuss your
9 testimony.

10 A. Over a dozen.

11 Q. And would it be fair so say that every single question that
12 was asked of you on direct examination was asked of you in the
13 prosecutor's office?

14 A. Correct.

15 Q. So that you knew exactly where the whole train of testimony
16 was going; is that right?

17 A. I did not.

18 Q. None of the questions came as a surprise, did they?

19 A. I wasn't familiar with them, but I've heard some of them.

20 Q. Well, I thought you just said in response to my question
21 that every question that was asked of you on direct was asked
22 of you in their offices before.

23 A. Basically. I don't -- there was some that wasn't asked.

24 Q. Now, if I ran off a list of dates, let me ask if this would
25 correspond to your recollection. Did you have a proffer

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Pennisi - Cross

1 session on December 18, 2018, January 4, 2019, January 16,
2 2019, February 13, 2019, May 6, 2019, May 10, 2019, May 16,
3 2019? Do those dates sound about correct in terms of when you
4 met with the government?

5 A. I don't know. Possibly, but I don't know.

6 Q. By the way, the prosecutor asked you -- at some point you
7 got a lawyer; is that right?

8 A. Correct.

9 Q. Did you hire that lawyer?

10 A. I did not.

11 Q. The government got a lawyer for you?

12 MR. SCOTTEN: Objection.

13 THE COURT: Sustained.

14 Q. You didn't hire him.

15 A. I did not.

16 THE COURT: Sustained. Sustained.

17 Q. Is that lawyer in court here today?

18 THE COURT: Sustained.

19 MR. MCMAHON: I can't ask that question, Judge?

20 THE COURT: That's what it means when I say sustained.
21 Do you have any other interpretation?

22 MR. MCMAHON: No.

23 THE COURT: So then don't ask the question and don't
24 make a comment.

25 MR. MCMAHON: Very well, your Honor.

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Pennisi - Cross

1 Q. And then on May 16, 2019, about a week ago -- a week and a
2 half ago -- you got a cooperation agreement.

3 A. I got a cooperation agreement. It says May 14.

4 Q. That's the date it was prepared. Take a look at the last
5 page of that document and see when you signed it.

6 A. Correct, May 16.

7 Q. So do you have any explanation for why you went through
8 seven or eight sessions before they gave you an agreement?

9 A. I don't.

10 Q. Were they waiting to hear good stuff from you?

11 THE COURT: Objection sustained.

12 Q. They weren't basically very happy with the stuff you were
13 giving them between October and early May, so you didn't get
14 any agreement then, did you?

15 THE COURT: Objection sustained. Change your
16 question.

17 Q. And so on the day that you signed the cooperation agreement
18 you also pled guilty; is that right?

19 A. Yes.

20 Q. Now, do you know when this trial started? Were you told by
21 the agents or prosecutors?

22 A. I was told that it was supposed to be the 20th.

23 Q. And you signed the agreement and pled guilty four days
24 before that?

25 A. The 16th.

J5S7CAS2

Pennisi - Cross

1 Q. Yeah. Was there any explanation given to you as to why all
2 of a sudden you pled guilty and signed an agreement?

3 MR. SCOTTEN: Objection.

4 THE COURT: Sustained.

5 Q. Did the government tell you either directly or through your
6 lawyer that they needed help on the Castelle case?

7 MR. SCOTTEN: Objection.

8 THE COURT: No, you can answer that question.

9 A. I was just told that I was being called.

10 Q. On this trial.

11 A. Correct.

12 Q. Now, did you read the cooperation agreement, which I think
13 is Government Exhibit -- I forget what the number is.

14 THE COURT: 337.

15 MR. MCMAHON: Thank you, Judge.

16 Q. Did you read that agreement before you signed it?

17 A. I went over it with the lawyer, of course.

18 Q. All right. But it's a slightly different question. Did
19 you read it?

20 A. Yes.

21 Q. It's a long agreement. And did you have questions of your
22 lawyer about it?

23 A. He was basically explaining everything to me.

24 Q. And as he was explaining it, were you asking him questions
25 about what this meant or that meant?

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Pennisi - Cross

1 A. It's kind of self explanatory.

2 THE COURT: So, the answer is you didn't ask, you read
3 it.

4 THE WITNESS: I read it, yes.

5 Q. So on the day you signed it, you felt comfortable that you
6 understood everything in that agreement.

7 A. Yes. And the judge was going over it to make sure that I
8 knew what I was doing, correct.

9 Q. When you pled guilty, the court may have been questioning
10 you, saying did you read the agreement, do you understand it,
11 etcetera.

12 A. Correct, correct.

13 Q. All right. And you said, yes, you absolutely understood it
14 that day.

15 A. Correct.

16 Q. And as you sit here today do you feel like you still
17 understand that agreement?

18 A. Basically, yes.

19 Q. And what are your obligations under that agreement?

20 A. To tell the truth.

21 Q. And that's it.

22 THE COURT: What?

23 Q. And that's it?

24 A. Well, no, if they call, I have to come and show up.

25 Q. Why is it that when I asked you the question on your

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Pennisi - Cross

1 obligations and the government asked you the same question,
2 your first sentence is to tell the truth? Did they tell you
3 that's how to answer it?

4 A. No, because they said that I would be breaking the
5 agreement if I didn't do that.

6 Q. OK, if you didn't tell the truth.

7 A. Correct.

8 Q. And who decides if you are telling the truth?

9 A. I don't know.

10 Q. Don't you think that's an important fact?

11 A. The jury? The judge?

12 Q. You don't know. No?

13 A. Excuse me?

14 Q. You don't know?

15 A. I would guess the jury.

16 Q. OK.

17 MR. MCMAHON: Ms. Brady, could I have page 4 of the
18 agreement, please.

19 Now, if we could highlight the second paragraph there.

20 Q. Now, do you see where it says in this paragraph on page 4
21 that should this office determine either that the defendant has
22 not provided substantial assistance, or that he has violated
23 any provision of this agreement -- such as the obligation to
24 tell the truth -- then they don't have to write the 5K1 letter?

25 A. Correct.

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Pennisi - Cross

1 Q. So the person or entity that decides if you're telling the
2 truth is not the jury, it's not the judge, it's this office at
3 the front table, the government.

4 MR. SCOTTEN: Objection.

5 THE COURT: Overruled.

6 A. I mean I take it that they're a part of it.

7 Q. Well, you mean the U.S. Attorney's office?

8 A. Correct.

9 Q. They're not a part of it; they are the entirety of it.

10 THE COURT: Sustained.

11 Q. Does it say anything in here that they share that
12 responsibility with anybody else, any jury, any court, anybody?

13 A. I don't see it, no.

14 Q. You don't understand in fact that the only people -- the
15 only people -- that decide if you are telling the truth are the
16 U.S. Attorney's office?

17 A. I guess in this, sure.

18 Q. But you signed this.

19 A. Yes.

20 Q. Your lawyer should have explained this to you.

21 THE COURT: Sustained.

22 Q. Now, what happens if you don't get a 5K1 letter?

23 A. I get life in prison -- up to life in prison.

24 Q. Is there a mandatory minimum?

25 A. Yes.

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Pennisi - Cross

1 Q. And what's the mandatory minimum?

2 A. Ten years.

3 Q. OK. So, if you don't get the 5K1 letter from the front
4 table, no matter what the judge thinks of you, you have to get
5 at least ten.

6 A. Correct.

7 Q. So that's an important letter.

8 A. Correct.

9 Q. Now, to get this letter you have mentioned two things that
10 you have to do so far; one is to tell the truth.

11 A. Correct.

12 Q. They decide whether it's true or not.

13 THE COURT: We're not going to go over that again.

14 MR. MCMAHON: OK.

15 Q. Another thing was you have to come to meetings if they
16 call.

17 A. Yes.

18 Q. And to get the letter do you also understand that you have
19 to give substantial assistance?

20 A. Correct.

21 Q. And would you tell the jury what that means.

22 A. To speak of crimes, not only myself has committed but
23 others have committed.

24 Q. Well, the word substantial means big, a lot. You got that?

25 A. Well, it's everything that I know.

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Pennisi - Cross

1 Q. No. OK, not quite the same. The agreement says --

2 THE COURT: We're not going to parse that, Mr.

3 McMahon.

4 MR. MCMAHON: But, Judge, it's important.

5 THE COURT: No it's not important. Substantial

6 assistance is open to interpretation.

7 Q. But who decides whether you have given substantial

8 assistance?

9 A. I don't -- I don't know.

10 Q. Well, the agreement says it's the government.

11 Ms. Brady could you bring up page 4. The first full

12 paragraph.

13 Now, do you see the sentence that begins midway

14 through there in that paragraph: In addition, if this office

15 determines that the defendant has provided substantial

16 assistance, and if he has fully complied with the other

17 understandings, they will give him a letter? Do you see that?

18 A. Yes.

19 Q. So, you have to not only tell the truth but you have to

20 give them a lot of help.

21 A. Correct.

22 Q. So, if you told them everything you knew and it was of no

23 help to them, you don't get a letter.

24 A. I don't know.

25 Q. Well, isn't that what that English sentence says?

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Pennisi - Cross

1 THE COURT: We're not going to go over that again.
2 You made your point. Move on.

3 Q. And so to get the letter, as part of your effort to provide
4 substantial assistance, you make up information about Eugene
5 Castelle.

6 A. Incorrect.

7 MR. MCMAHON: Is there an objection?

8 MR. SCOTTEN: I think you got it.

9 THE COURT: May I be the one to determine?

10 MR. MCMAHON: Yes, Judge, you may object at any time.

11 Q. So, now we've gone over this agreement, and in summary --
12 and to close this part of my cross-examination, your Honor --

13 THE COURT: You are already telling me the question is
14 no good because you can't summarize now. Next topic.

15 MR. MCMAHON: OK.

16 Q. Now, I take it from the fact that you came in the back of
17 the courtroom that you're not in jail.

18 A. Correct.

19 Q. And part of your agreement with the government was that
20 even though you pled guilty to a ten year mandatory minimum,
21 you got bail.

22 MR. SCOTTEN: Objection.

23 THE COURT: He didn't plead guilty to a ten year
24 mandatory minimum. He pleads guilty to a crime.

25 MR. MCMAHON: A crime which carries a sentence of a

J5S7CAS2

Pennisi - Cross

1 ten year mandatory minimum.

2 THE COURT: Excuse me. The law provides that there
3 are ranges of punishment for crimes. There are ranges that go
4 up to life, sometimes death. There are also mandatory
5 minimums, certain crimes must be punished to certain degrees,
6 no less.

7 However, there are outlets. One of the outlets is the
8 5K letter. If a judge receives a 5K letter from the
9 government, the judge has the discretion to sentence the
10 defendant below the mandatory minimum. That's an exception
11 provided by Congress. There are other exceptions as well.
12 Whether the government can be arbitrary or not is a question of
13 law that you're not going to be involved with here.

14 All right. I think we've exhausted the agreement, and
15 you can move on.

16 MR. MCMAHON: All right.

17 Q. Did you have to post any money to get out on bail?

18 A. No.

19 Q. You just signed your signature and out you walked.

20 THE COURT: Questions of bail are determined by the
21 court.

22 Q. Well, was that a benefit agreed upon by the government?

23 THE COURT: The government does not decide on bail,
24 the court does. Move on, please.

25 Q. Now, I understand that you have about \$20,000 in assets,

J5S7CAS2

Pennisi - Cross

1 sir?

2 A. Correct.

3 Q. And is that in cash somewhere?

4 A. Correct.

5 Q. And was that obtained by virtue of your criminal activity?

6 A. It was the original money that I had.

7 Q. The original money that you had from when?

8 A. From my grandmother.

9 Q. Oh, so you never spent any of the money from your
10 grandmother?

11 A. No, I got it back.

12 Q. Who gave it back to you?

13 A. The person that I lent it to.

14 Q. Oh, the loan shark money came back.

15 A. Correct.

16 Q. But that's loan shark money.

17 THE COURT: Let's not quarrel over it. Let's move on.

18 Q. Did the government seize that loan shark money?

19 A. They did not.

20 Q. Have you ever paid any taxes, Mr. Pennisi?

21 A. Yes, I have. Yes, I have.

22 Q. Have you ever paid any taxes on your criminal activity?

23 A. No, I haven't.

24 Q. Now, you made a lot of money, tens of thousands of dollars,
25 on this Range Rover scam that you were involved in?

J5S7CAS2

Pennisi - Cross

- 1 A. Not tens of thousands.
- 2 Q. \$15,000?
- 3 A. Somewhat.
- 4 Q. And this was a scam, and these new Range Rovers got sent to
5 China, correct?
- 6 A. Correct.
- 7 Q. Now, did you pay any taxes on that 15,000?
- 8 A. I did not.
- 9 Q. Has the government ever told you that you have to amend
10 your tax return and declare these criminal proceeds?
- 11 A. No.
- 12 Q. Never came up. You don't intend to amend your tax returns,
13 do you?
- 14 A. No.
- 15 Q. Now, you testified on direct examination on Thursday that
16 you heard my client -- either he told you or he told somebody
17 else that he did a score and he gave \$2500 to Matty Madonna and
18 said take your wife out to dinner or something.
- 19 A. Correct.
- 20 Q. And did you hear that directly from my client?
- 21 A. Yes.
- 22 Q. And was that something that you made up to provide
23 substantial assistance?
- 24 A. No.
- 25 Q. Well, isn't it in fact true that you had ten or 12 or 14

J5S7CAS2

Pennisi - Cross

1 sessions with the government before testifying --

2 THE COURT: We have gone over that, Mr. McMahon.

3 We're not going to do it again.

4 Q. And you never once mentioned this to the government?

5 MR. SCOTTEN: Objection.

6 Q. You brought it up for the first time in court last

7 Thursday; is that correct? You may answer.

8 A. Can you repeat the question.

9 Q. Yes. You said you had a conversation with my client and he
10 told you that he did a score and gave \$2500 to Matty Madonna.

11 A. Correct.

12 Q. Now in all of those debriefing sessions from October until
13 last Wednesday you never mentioned that to any prosecutor or
14 agent.

15 A. Incorrect.

16 Q. You did mention it?

17 A. Correct.

18 Q. When did you mention it?

19 A. At one of those sessions.

20 Q. At one of those sessions?

21 A. Correct.

22 Q. One of those 12 or so?

23 A. Correct.

24 Q. You're sure you did?

25 A. Absolutely.

J5S7CAS2

Pennisi - Cross

1 Q. Was it closer to October, or was it closer to last week?

2 A. I don't -- we spoke about a lot, but I definitely mentioned
3 it.

4 Q. You definitely mentioned it. But I'm asking you was it
5 closer to October or was it closer to last week?

6 A. No, Mr. McMahon, we had a lot of sessions, spoke about a
7 lot. I definitely mentioned it. I don't remember. Last week?
8 No, it was definitely before last week.

9 Q. Have you reviewed your 3500 material?

10 A. I have not.

11 MR. MCMAHON: Judge, I think that Mr. Scotten wants to
12 point something out to me, but of course he has redirect. So
13 if you tell him to stop --

14 THE COURT: I am not in the habit of having
15 conversations between counsel during the course of an
16 examination. Mr. Scotten, that's improper conduct.

17 MR. SCOTTEN: I haven't said anything, Judge.

18 THE COURT: I don't care what you didn't say. You
19 pointed.

20 MR. SCOTTEN: Yes, Judge.

21 THE COURT: It's improper conduct; you know it; don't
22 do it.

23 MR. SCOTTEN: Yes, Judge.

24 THE COURT: And, Mr. McMahon, it's improper conduct to
25 comment on another lawyer. If you want that information, give

J5S7CAS2

Pennisi - Cross

1 it to me, give it to me at sidebar. Don't do it again either
2 of you.

3 MR. SCOTTEN: Yes.

4 MR. MCMAHON: Very well, Judge.

5 Q. When did this conversation with my client take place?

6 A. Sometime between 2013, maybe to 2014, 2015. I'm not sure.

7 Q. So, you can't pin it down to any more than a two year
8 period?

9 A. I just did.

10 Q. Do you remember where this conversation took place?

11 A. Yeah, in the cigar lounge.

12 Q. And so there must have been other people present that would
13 have been able to hear this.

14 A. I don't -- I don't remember. I was there.

15 Q. So, you don't have anybody that can corroborate that.

16 A. Not that I know of.

17 Q. And supposedly my client told you at some point in time
18 that he would like you to maybe pass a message to your friend
19 Joe DiBenedetto.

20 A. Absolutely not.

21 Q. Well, can I get the question out?

22 A. Go ahead.

23 Q. You know the part about where Mr. Castelle supposedly
24 volunteered to be the acting boss of the Lucchese family?

25 A. That's incorrect.

J5S7CAS2

Pennisi - Cross

1 Q. Refresh my recollection, how did that go down?

2 A. I don't know what you're speaking about, but --

3 THE COURT: Just answer the question.

4 Q. You didn't testify last Thursday that Mr. Castelle wanted a
5 message to go to Vic Amuso?

6 A. I did not, not through me.

7 Q. Through Joe DiBenedetto.

8 A. Joey DiBenedetto -- I was bringing a message to Joey
9 DiBenedetto. Joey DiBenedetto was complaining about Boobsie.

10 Q. OK. I'm asking -- Joe DiBenedetto --

11 A. You said I sent the message -- that he wanted to send a
12 message to me. That's incorrect.

13 Q. No, he being Mr. Castelle, my client --

14 A. Yes.

15 Q. According to your testimony, as I understood it, was that
16 my client wanted a message to go to Vic Amuso who was in jail
17 that my client was volunteering to be the acting boss.

18 A. Correct.

19 Q. OK. Now, did my client say that to you?

20 A. He did not.

21 Q. So you heard from somebody else that my client said it to
22 somebody else?

23 A. I just said Joey DiBenedetto, yes.

24 Q. OK. And you were not there when my client supposedly said
25 it.

J5S7CAS2

Pennisi - Cross

1 A. I was not there.

2 Q. Do you know when my client supposedly said it?

3 A. This conversation happened sometime I believe 2018. I
4 don't know when he spoke to him.

5 Q. Last year sometime.

6 A. Yes.

7 Q. But you don't have any more particulars other than that?

8 A. Meaning particulars of what?

9 Q. Where the conversation took place, who else may have been
10 present.

11 A. I just told you I was told from Joey DiBenedetto of the
12 conversation.

13 Q. All right. So, you don't even know if it's true or not.

14 A. I mean do I know if it's true? I believe Joey when he told
15 me. I don't know. I do not know.

16 Q. Well, wise guys lie routinely, don't they?

17 THE COURT: Mr. McMahon that's comment and argument.
18 It's not a question.

19 Q. That's a question, don't wise guys lie repeatedly,
20 routinely?

21 A. I have seen guys lie before, yes.

22 Q. Now, Joe DiBenedetto didn't like Eugene Castelle.

23 A. Are you asking me that?

24 Q. Yes, that's a question.

25 A. He didn't like him? He did like him.

J5S7CAS2

Pennisi - Cross

- 1 Q. He did like him?
- 2 A. Of course.
- 3 Q. He scoffed at the idea of him being the acting boss, didn't
- 4 he?
- 5 A. He liked him, but he was upset that he was asking him to
- 6 deliver such a message.
- 7 Q. And supposedly my client, did he ask you to try and get a
- 8 no-show job for him from DiFama Concrete?
- 9 A. He did not ask me.
- 10 Q. Who did he ask?
- 11 A. He again mentioned that he asked Joey DiBenedetto.
- 12 Q. Joey DiBenedetto mentioned it, not my client.
- 13 A. Your client mentioned it.
- 14 Q. Oh, he mentioned that he had asked Joey DiBenedetto --
- 15 A. Yes.
- 16 Q. -- for a no-show job with DiFama Concrete.
- 17 A. Correct.
- 18 Q. Now, is it not well known, Mr. Pennisi, that DiFama
- 19 Concrete is a clean, legit company, and it didn't have no-show
- 20 jobs?
- 21 A. DiFama Concrete is with Joey DiBenedetto, and you know what
- 22 that means.
- 23 Q. Well, you tell me.
- 24 A. It means that he's an associate of the family.
- 25 Q. OK. So, it's not a clean legit company.

J5S7CAS2

Pennisi - Cross

1 A. I don't know what you would consider clean and legit. He
2 is with -- the owner of the company is with Joey DiBenedetto.

3 Q. OK. And maybe they do have no-show jobs.

4 A. I have no idea.

5 Q. OK. And again Joey DiBenedetto scoffed at the idea of
6 trying to get a no-show job with the company that's around him
7 for Mr. Castelle.

8 A. If your interpretation of scoff means that he was upset, he
9 was upset that he wanted him to send such a message, yes.

10 Q. So Joe DiBenedetto didn't like sending a message to Vic
11 Amuso about being the active boss; he didn't like sending a
12 message to Fama about a no-show job; he didn't like any
13 messages that came from Mr. Castelle. Is that the long and the
14 short of it?

15 A. I don't know. This is what was being told to me.

16 Q. Now, are you a member of the Lucchese family now?

17 A. I am not.

18 Q. You are inactive?

19 A. I am not a member.

20 Q. Well, my next question was are you inactive.

21 A. Define inactive. I'm not a member.

22 Q. Did you withdraw?

23 A. I walked away.

24 Q. All right. Now, you know John Gotti, Jr. claimed he
25 withdrew?

J5S7CAS2

Pennisi - Cross

1 A. I don't know.

2 THE COURT: Objection sustained.

3 Q. Did you testify last Thursday that once you've been
4 inducted as a soldier you're there until you die?

5 A. I don't remember saying that.

6 Q. Well, do you understand that to be true?

7 A. That I'm there until I die?

8 Q. Yeah.

9 A. I never was told those words.

10 Q. That was not something that took place at your induction
11 ceremony?

12 A. Those words? No.

13 Q. In essence, that once you become part of our family, you
14 are here in our family until you die.

15 A. Those words were never said to me.

16 Q. Well, there wasn't something about until death and burning
17 saints and what have you?

18 A. No, that was something else.

19 Q. By the way, do you remember what saint was on the card?

20 A. I do not.

21 Q. Now, you understood that Eugene Castelle was inactive; is
22 that correct?

23 A. Excuse me?

24 Q. Did you understand that Mr. Castelle was inactive?

25 A. I did not know that at all.

J5S7CAS2

Pennisi - Cross

1 Q. Now, you don't like Mr. Castelle, do you?

2 A. I don't like him?

3 Q. Yeah.

4 A. I have no --

5 Q. You're under oath.

6 A. Yes, I have no feelings for him whatsoever.

7 THE COURT: One way or the other?

8 THE WITNESS: One way or the other.

9 THE COURT: One way or the other, you don't like him,
10 you don't dislike him.

11 THE WITNESS: When I was in that life I didn't like
12 his character, correct.

13 Q. And personality.

14 A. Correct.

15 Q. And you didn't like that he was dating your girlfriend on
16 the sly.

17 A. That was against our rules.

18 Q. OK. Did it get you angry?

19 A. Of course it got me angry.

20 Q. Very angry.

21 A. I was upset, yes.

22 Q. Well, I think you said very angry.

23 A. Very angry, upset, yes.

24 Q. Angry enough to come in here and lie about him?

25 A. No.

J5S7CAS2

Pennisi - Cross

1 Q. Angry enough to come in here and make up substantial
2 assistance?

3 A. No.

4 Q. You don't like it when other men go out with your
5 girlfriends?

6 A. I don't think anybody does.

7 Q. But you take it in particular hard.

8 MR. SCOTTEN: Objection.

9 THE COURT: Sustained.

10 Q. Now, you described the induction ceremony for yourself; is
11 that right?

12 A. Correct.

13 Q. And the induction ceremony, I think you said that Big John
14 Castellucci was there?

15 A. Correct.

16 Q. And he was the capo of your crew?

17 A. Correct.

18 Q. And I think you also said that he was my client's brother.

19 A. He is his brother.

20 Q. He is his brother. And there was another Castelle at this
21 induction ceremony; is that right?

22 A. Yes.

23 Q. And who was that?

24 A. Spanky.

25 Q. That would be Anthony Castelle.

J5S7CAS2

Pennisi - Redirect

1 A. Correct.

2 Q. So, when you were inducted into the Lucchese family -- and
3 how long ago was this?

4 A. It was April of 2013.

5 Q. So there are two Castelle/Castelluccis there.

6 A. Correct.

7 Q. And the one that's not there is Mr. Eugene Castelle; is
8 that right?

9 A. Correct.

10 Q. Because in fact he was inactive.

11 A. Absolutely not.

12 MR. MCMAHON: Nothing further, Judge.

13 THE COURT: Redirect.

14 MR. SCOTTEN: Yes, Judge. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. SCOTTEN:

17 Q. A few questions, Mr. Pennisi. Do you recall being asked if
18 you had to threaten people with your fists to collect
19 repayment?

20 THE COURT: Don't drop your voice. Keep it up.

21 MR. SCOTTEN: Thank you, Judge.

22 Q. Do you recall being asked if your personal reputation with
23 your fists is how you got repaid? Do you recall Mr. McMahon
24 asking you that?

25 A. Correct, yeah.

J5S7CAS2

Pennisi - Redirect

1 Q. What reputation enabled you to get repaid?

2 A. I was a member of the Lucchese family.

3 Q. The people that you lent to, had you necessarily ever been
4 in a fight with them?

5 A. No.

6 Q. Had they ever seen you fight?

7 A. No.

8 Q. Did you believe they knew who the Lucchese family was?

9 A. Yes.

10 Q. Do you recall being asked if you would just remember this
11 business of the defendant paying Madonna for a score?

12 A. Yes.

13 Q. When you met with the government, were you shown pictures
14 of many possible people?

15 A. Yes.

16 Q. Do you recall being shown pictures of Matty Madonna around
17 January 4, 2019?

18 A. Yes.

19 Q. Could that have been when you said --

20 MR. MCMAHON: Objection. Leading.

21 A. Like I said --

22 Q. When you saw pictures of Matty Madonna, could that have
23 been when you talked about him getting paid by the defendant?

24 THE COURT: "Could that" is not a good question; it's
25 a question of possibility. Ask about recollection.

J5S7CAS2

Pennisi - Redirect

1 Q. Do you recall telling --

2 THE COURT: Do you recall the time that you were shown
3 the picture of Matty Madonna?

4 THE WITNESS: I seen several pictures, and it was not
5 the picture. I remember saying it. I've said everything. I
6 don't remember when it was, but I definitely said it. Whether
7 or not it's written down or not, I definitely discussed it.

8 Q. Was it several months ago before you ever knew you would
9 testify at this trial?

10 A. It could have even been longer.

11 Q. When you were meeting with the F.B.I. before you had a
12 lawyer, the government's lawyer was there, were you asked about
13 the defendant?

14 A. Yes.

15 Q. Did you tell them that he was an active member of the
16 Lucchese family?

17 A. He was a friend.

18 Q. Was that months before you knew this trial was coming?

19 A. Excuse me?

20 Q. Was that months before you knew you would be testifying
21 here?

22 A. Yes.

23 Q. Do you recall being asked about substantial assistance?

24 A. Yes.

25 Q. Are you a made member of the Lucchese -- were you a made

J5S7CAS2

Pennisi - Redirect

1 member of the Lucchese family?

2 A. I was.

3 Q. About how many members of the Lucchese family do you think
4 you met over your years in the family?

5 A. Numerous. I mean an untold amount.

6 Q. Have you also met members of other families?

7 A. Yes.

8 Q. Have you provided information about the previous acting
9 boss' family, Matty Madonna?

10 A. Yes.

11 Q. The current -- or the acting boss as of 2018 Michael
12 DeSantis?

13 A. Yes.

14 Q. The official underboss Steven Crea?

15 A. Yes.

16 MR. MCMAHON: Judge, this is beyond the scope.

17 THE COURT: No, it's not.

18 Q. Captains in the family such as Steven Crea's son Stevie
19 Junior?

20 A. Yes.

21 Q. And many, many soldiers in the family.

22 A. Yes.

23 Q. Do you have any doubt that if you testify truthfully you
24 will provide substantial assistance?

25 MR. MCMAHON: Objection, Judge.

J5S7CAS2

Pennisi - Redirect

1 THE COURT: Sustained.

2 Q. Are you concerned about providing any information about
3 this defendant in order to provide substantial assistance?

4 THE COURT: Please state it again.

5 Q. Do you believe you have to say anything about this
6 defendant in order to provide substantial assistance?

7 A. I just -- you told me speak the truth, and I'm speaking the
8 truth.

9 Q. Do you recall being asked about who determined the truth?

10 A. Yes.

11 Q. If the government doesn't think you're telling the truth,
12 are we going to write a letter?

13 A. No.

14 Q. If the Judge doesn't think you're telling the truth, how do
15 you feel you will do at sentencing?

16 MR. MCMAHON: Objection.

17 THE COURT: Overruled.

18 A. I think he is going to take that into consideration against
19 me.

20 Q. Do you recall being asked about money you had left over
21 from when you were in the family?

22 A. Yes.

23 Q. And just to be clear, this is money you inherited but then
24 you lent out and got back.

25 A. Yes.

J5S7CAS2

Pennisi - Redirect

1 Q. Is there a forfeiture provision in your plea agreement?

2 A. Yes.

3 Q. Who determines how much money you have to give up?

4 A. We went over this with the lawyer, and my lawyer said that
5 ultimately it's the judge.

6 Q. When does that happen?

7 THE COURT: Who makes the recommendation to the judge?

8 THE WITNESS: I'm not sure. I just know it's at
9 sentencing.

10 Q. Have you been sentenced yet?

11 A. Excuse me?

12 Q. Have you been sentenced yet?

13 A. I have not.

14 Q. Do you believe you're likely to have to give up any crime
15 proceeds you have when you are sentenced?

16 A. Yeah, it was explained to me through the lawyer.

17 Q. Do you recall being asked if you were jealous -- or that
18 your past jealousy motivated you?

19 A. For?

20 Q. If you're mad at the defendant because he slept with your
21 ex-girlfriend three years ago.

22 THE COURT: You're dropping your voice.

23 MR. SCOTTEN: I apologize, Judge. I feel loud but I
24 guess I'm not.

25 THE COURT: The trouble is you're trying to get the

J5S7CAS2

Pennisi - Redirect

1 sentence in too quickly. Take a little more time, speak
2 louder.

3 MR. SCOTTEN: Got it.

4 Q. Do you remember being asked if you're mad at the defendant
5 and testifying against him because he slept with your
6 girlfriend several years ago?

7 A. I remember.

8 Q. About how many years ago was that?

9 A. Over two and a half, almost three maybe.

10 Q. What's the maximum sentence you could receive in this case?
11 Maximum.

12 A. Oh, maximum? Maximum is a life sentence.

13 Q. Do you have safety concerns because you testified against
14 the Mafia?

15 MR. MCMAHON: Objection.

16 THE COURT: Sustained.

17 Q. Have there been effects on your life other than the
18 possible prison sentence from testifying?

19 THE COURT: I don't think this is relevant.
20 Sustained.

21 Q. Are all the costs you've incurred in testifying something
22 that -- withdrawn.

23 Are your feelings towards the defendant any
24 significant part of why you're testifying?

25 A. No.

J5S7CAS2

Pennisi - Recross

1 Q. Do you recall being asked if the defendant was inactive?

2 A. Yes.

3 Q. Can an inactive member receive a no-show job?

4 A. No.

5 Q. Does an inactive member give money to the boss of the
6 family?

7 A. No.

8 Q. In fact can an inactive member even meet with other members
9 of the family?

10 A. He cannot.

11 Q. Can you meet with other members of the family now?

12 A. No.

13 MR. SCOTTEN: Nothing further, your Honor.

14 THE COURT: Thank you, Mr. Pennisi. You can step
15 down.

16 MR. MCMAHON: Briefly, Judge, recross.

17 THE COURT: Sit down.

18 Go ahead.

19 RE CROSS EXAMINATION

20 BY MR. MCMAHON:

21 Q. You just told the prosecutor that you can't meet members of
22 the family because you're inactive.

23 A. Correct.

24 Q. When I asked you if you were inactive, you were not able to
25 answer that question.

J5S7CAS2

Pennisi - Recross

1 THE COURT: Yes, he did.

2 A. I did.

3 Q. Now, this lawyer who explained the forfeiture to you, he is
4 not here, right?

5 THE COURT: Objection sustained. We went over that
6 before.

7 MR. MCMAHON: Yes, we did, Judge. He brought it up on
8 redirect.

9 Q. The suits that you wore Thursday and today, did the
10 government buy those for you?

11 A. Absolutely not.

12 Q. Now, this business about if you told the government about
13 the score, you were asked about a proffer session January 4,
14 2019. Here is 11 pages and the pictures, and please point out
15 to me where in those 11 pages does it say about the score.

16 A. Mr. McMahon --

17 THE COURT: About the what? What is he asking you?
18 The score?

19 THE WITNESS: He is asking me a question that he knows
20 the answer to.

21 You're telling me it's nowhere in the papers, and
22 you're asking me to look for something that is not there. I
23 already explained to you that I spoke about this already.

24 Q. Even if they didn't write it down.

25 A. That's not my --

J5S7CAS2

Pennisi - Recross

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MR. SCOTTEN: Can we approach?

THE COURT: Excuse me. I think we're going beyond the recross.

MR. O'HARA: Very well, Judge.

Nothing further, Judge.

THE COURT: You can step down, Mr. Pennisi. Thank you.

(Witness excused)

THE COURT: We will take a break now, members of the jury. Close your books and leave them on your seats. Don't discuss the testimony. Let's take 15 minutes.

(Continued on next page)