

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 vs.) CRIMINAL CASE NO. CCB-17-106
6 DANIEL THOMAS HERSL and)
7 MARCUS ROOSEVELT TAYLOR,)
8 Defendants.)
9 _____)

8
9 Tuesday, January 30, 2018
10 Courtroom 1A
11 Baltimore, Maryland

11 BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE
12 (AND A JURY)

13 VOLUME IV

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16
17 For the Plaintiff:

18 Leo J. Wise, Esquire
19 Derek E. Hines, Esquire
20 Assistant United States Attorneys

21 _____
22 Reported by:

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1 For the Defendant Daniel Hersl:

2 William B. Purpura, Jr., Esquire
3 Thomas W. Rafter, Esquire

4 For the Defendant Marcus Taylor:

5 Christopher C. Nieto, Esquire
6 Jenifer Wicks, Esquire

7 Also Present:

8 Special Agent Erika Jensen, FBI

9 TFO John Sieracki

10 Matthew Kerrigan, Government's Trial Technician

11 Crystal Panas, Defense Paralegal

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P R O C E E D I N G S

(10:06 a.m.)

THE COURT: You can be seated, please.

Counsel, I have a preliminary matter to discuss with you at the bench.

(Bench conference on the record:

THE COURT: Good morning. So Ms. Moyé advised me that Alternate Juror No. 1 told her this morning, regretfully, that she had looked up the definition of the word "racketeering."

She says she realized as soon as she did that, first of all, that, in fact, the word "racketeering" had been discussed, I think referring to your opening. Also realized she should not have done that, did not share it with anybody else on the jury, but confessed to Ms. Moyé that she had done that.

So I don't know, if you all feel --

MR. PURPURA: Does she understand it? 'Cause I certainly don't. Maybe she could explain it to me.

THE COURT: It's obviously a concept that is going to be thoroughly discussed and explained in the instructions, and we always tell them to follow the instructions.

So, I mean, particularly given that she came forward and confessed, it doesn't seem terribly concerning to me.

But, I mean --

MR. PURPURA: On behalf of Mr. Hersl, I have no issue.

1 **THE COURT:** All right.

2 **MR. WISE:** Could we just think about it for a minute
3 and maybe get back to the Court a little later in the day about
4 it?

5 **THE COURT:** So go ahead and continue to have her sit
6 for now?

7 **MR. WISE:** Yeah.

8 **MR. NIETO:** It was the alternate; correct, Your Honor?

9 **THE COURT:** It's Alternate No. 1.

10 **MS. WICKS:** I don't have a problem with it other than
11 I think that we should make a record and, you know, just put
12 this on the record with her and make sure that she understands
13 that she's not supposed to do that and that she will continue
14 to abide by your instructions not to look up anything related
15 to the case: definitions, anything about the facts.

16 **THE COURT:** Okay. So your position would be to have
17 her come in and do that?

18 **MS. WICKS:** Yes.

19 **MR. WISE:** It is my concern -- I'm sort of thinking
20 out loud. I apologize -- is that it's sort of she did it once;
21 I appreciate that she -- I'm glad she said she did it, but
22 whether that's something that might happen again, particularly
23 once, you know -- maybe once they are instructed or there's
24 another term that catches her attention that she feels like she
25 doesn't know the definition of and might want to know?

1 **THE COURT:** I mean, I think we would address that with
2 Ms. Wicks' suggestion of making sure that I tell her, again,
3 that she can't do that.

4 I think the fact that she came forward and confessed
5 seems to indicate that she's not likely to do it again if we
6 tell her not to do it again.

7 But if you all -- if you want to think about it a
8 little bit longer and then do this at the break or something, I
9 mean, I don't think there's any --

10 **MR. WISE:** I think that would be fine.

11 **THE COURT:** -- great risk between now and the break.

12 **MR. WISE:** Yes. I agree that's a good way to do it.
13 Thank you.

14 **THE COURT:** All right. We'll wait for the break.
15 Thanks.)

16 (Bench conference concluded.)

17 **THE COURT:** All right, then, if we're ready for the
18 jury.

19 **MR. WISE:** Yes, Your Honor.

20 (Jury entered the courtroom at 10:10 a.m.)

21 **THE COURT:** All right. You can be seated. And good
22 morning. Welcome back.

23 **THE CLERK:** Mr. Rayam, you're still under oath.

24 **THE WITNESS:** Yes, ma'am.

25 JEMELL RAYAM, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN.

1 **THE COURT:** All right. Mr. Hines, if you want to
2 continue.

3 **MR. HINES:** Thank you, Your Honor.

4 DIRECT EXAMINATION (CONTINUED)

5 **BY MR. HINES:**

6 **Q.** Good morning, Mr. Rayam.

7 **A.** Good morning.

8 **Q.** Yesterday before we recessed for the day, you were
9 testifying about an episode involving a second storage unit.

10 Do you remember that?

11 **A.** Yes.

12 **Q.** And we showed you an exhibit from FBI-11 and a recorded
13 conversation you had in which you said [reading]: I taxed him
14 a little bit, but Taylor was there. I had to give \$60."

15 Do you remember testifying about that?

16 **A.** Yes.

17 **Q.** And is that the episode in which you did, in fact, give
18 Taylor money?

19 **A.** Yes.

20 **Q.** I'd like to show you what's been marked as
21 Government's Exhibit SS-2.

22 Mr. Rayam, do these appear to be photographs from the
23 night of that episode?

24 **A.** Yes.

25 **Q.** I'd like to show you this -- walk you through the

1 photographs one by one.

2 In the bottom left-hand corner, who is this individual
3 right here (indicating)?

4 **A.** That right there is Ward.

5 **Q.** It's Mr. Ward?

6 **A.** Yes.

7 **Q.** And who is this person (indicating)?

8 **A.** That was one of the people we had detained, yeah, in
9 cuffs.

10 **Q.** Is that the person who owned the storage locker or the
11 other person that you testified about?

12 **A.** That was the driver.

13 **Q.** Okay. If I show you the bottom right-hand photo, who's
14 this (indicating)?

15 **A.** That is myself, Jemell Rayam.

16 **Q.** And you're on the left-hand side of that photograph?

17 **A.** Yeah, that's me. And that is Taylor.

18 **Q.** That's Detective Taylor (indicating)?

19 **A.** Detective Taylor, yes.

20 **Q.** And is that the same man you identified in the prior
21 photograph (indicating)?

22 **A.** Yes.

23 **Q.** And who is this?

24 **A.** That's the other individual that was there. I forget his
25 name.

1 Q. Is this the individual that owned the storage locker?

2 A. Yes.

3 Q. And looking in the top right-hand photograph, who is the
4 individual that appears to be speaking with the owner of that
5 storage locker (indicating)?

6 A. That was Wayne Jenkins, our sergeant at the time.

7 Q. And, again, is that you and Mr. Taylor?

8 A. Yes.

9 Q. And this photograph here in the top right-hand corner,
10 who's this (indicating)?

11 A. That's Wayne.

12 Q. And what does he appear to be doing here?

13 A. He's restraining him. To me that's what it looks like
14 he's doing, holding him. Holding him.

15 Q. And who is this (indicating)?

16 A. Taylor.

17 Q. And on the second page of SS-2, who's that (indicating)?

18 A. Hersl.

19 Q. Was Hersl present during the search of the storage locker?

20 A. No, not during the search of the storage locker.

21 Q. Was he at the storage facility --

22 A. Yes.

23 Q. -- during the episode?

24 A. Yes.

25 Q. Okay. Now, as promised yesterday, I'd like to ask you

1 some questions about overtime fraud.

2 First, I'd like to direct your attention in the transcript
3 books to Page 12 of FBI-9. That's Page 12, Session 1162.

4 Did you speak with or have conversations with
5 Detective Gondo about overtime and time and attendance and
6 things like that?

7 **A.** Yes.

8 **Q.** I'd like to play for you a call from July 14th, 2016.
9 (Audio was played but not reported.)

10 **MR. HINES:** If you'd pause it right there,
11 Mr. Kerrigan.

12 **BY MR. HINES:**

13 **Q.** Mr. Rayam, who are -- who's speaking in this call?

14 **A.** Myself and Gondo.

15 **Q.** And when Gondo says, "They got a gun at 4:00," what did
16 you understand that to mean?

17 **A.** They got a gun at 4 o'clock p.m. that day, around that
18 time.

19 **Q.** And the time of this call is 7:16 p.m.; is that right?

20 **A.** As I can see, yes.

21 **Q.** And when you ask "the three dudes," what did you mean by
22 that?

23 **A.** Hendrix, Taylor, and Ward.

24 **Q.** So not Hersl (indicating)?

25 **A.** Um, you know, I -- I don't think it was Hersl. It depends

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1 what episode this was, but I don't -- I'm not sure if it was
2 Hersl.

3 **Q.** When you went on to say, "If you can get one signed for
4 me," what did you mean by that?

5 **A.** To get a slip signed.

6 **MR. HINES:** Okay. Can you continue playing the call,
7 Mr. Kerrigan.

8 (Audio was played but not reported.)

9 **MR. HINES:** You can pause it there, Mr. Kerrigan.

10 **BY MR. HINES:**

11 **Q.** So, Mr. Rayam, are you working at this time of this call?

12 **A.** No.

13 **Q.** Was Gondo working?

14 **A.** At the phone call, it sounds like he went in a little
15 later, around 6:00.

16 **Q.** And is that --

17 **MR. HINES:** If you zoom in on the top there,
18 Mr. Kerrigan.

19 **BY MR. HINES:**

20 **Q.** When Gondo's -- when you asked Gondo, "Yeah, what time did
21 you get down there?" and he says, "6:00, like 6:15," what does
22 that mean?

23 **A.** He -- he just -- he was just gettin' into work.

24 **Q.** And what was your assigned shift in the unit, generally?

25 **A.** Our general assigned shift was 8:00 to 4:00, Monday

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1 through Friday.

2 **Q.** And is that a reference to 6:15 p.m.?

3 **A.** Yes.

4 **Q.** Okay.

5 **MR. HINES:** You can continue playing the call,
6 Mr. Kerrigan.

7 (Audio was played but not reported.)

8 **BY MR. HINES:**

9 **Q.** And directing your attention to the bottom of the page,
10 when you say, "John ain't going to get me a slip signed. I'ma
11 call him up, yo," what did you mean by that?

12 **A.** Just -- I was just going to call John up and just see if
13 he can cover me as far as getting a slip signed directly
14 instead of going through Gondo.

15 **Q.** And then you asked, "Where Dan at? Is Danny there?"

16 **A.** Yeah. I guess I made a mistake earlier. I had to -- as
17 far as hearing the whole conversation, Dan was there earlier.
18 So I was just seeing if -- yeah, if Dan was there, then I could
19 call him up, then, to see if I could get a slip signed.

20 **Q.** How does Gondo respond to you when you ask, "Is Dan
21 there?"

22 **A.** He just respond, "Dan probably at the bar." He left.

23 **Q.** So did you understand Daniel Hersl to be working at the
24 time that Gondo was working?

25 **A.** Yes, earlier, yes.

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1 Q. Okay. Now, I'd like to direct your attention to PP-3D.

2 Is this an overtime slip in your name?

3 A. Yes.

4 Q. And what is the "overtime work performed" explanation on
5 the bottom of the page?

6 A. [Reading]: Crime suppression handgun violation,
7 4600 Grindon.

8 Q. Was this in reference to the search that Gondo had
9 discussed with you on the previous call?

10 A. Yes.

11 Q. And this is -- you said you weren't working that day?

12 A. No.

13 Q. The top right-hand corner, it says "Other shift, 8:00 to
14 6:00." Is that what that says up here?

15 A. Yes. Well, that -- it could have been 8:00 to 4:00.

16 Q. Okay. Or 8:00 to 4:00. I'm sorry.

17 A. I just --

18 Q. Did you work any of that time?

19 A. No.

20 Q. And then eight hours on the top, did you work any of that
21 time?

22 A. No.

23 Q. I'd like to move on to the next call dated July 23rd,
24 2016. This is on Page 17 of FBI-9.

25 (Audio was played but not reported.)

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1 **MR. HINES:** Is this Page 14 of the transcript?

2 **THE COURT:** You mentioned Page 17.

3 **MR. HINES:** Okay. I misspoke.

4 If you could go to Page 14, Mr. Kerrigan. My
5 apologies.

6 And, Ms. Moyé, I think these two screens are off.

7 **THE CLERK:** Okay.

8 **MR. HINES:** You can go ahead and play the call,
9 Mr. Kerrigan.

10 (Audio was played but not reported.)

11 **MR. HINES:** You can stop it right there, Mr. Kerrigan.
12 Thank you.

13 **BY MR. HINES:**

14 **Q.** Mr. Rayam, who's speaking on this call?

15 **A.** Hold up.

16 It was myself and Gondo.

17 **Q.** And on the top of the page, when Gondo says, "It's just me
18 and him," who's actually working on this date?

19 **A.** I think it was -- I think it was just him and Wayne.

20 **Q.** So Gondo is explaining to you that only he and Wayne are
21 working?

22 **A.** You know, I can't -- I don't recall as far as who was
23 working with -- it could have been him, but I -- I can't
24 recall.

25 **Q.** Were you working?

1 **A.** No.

2 **Q.** I'd like to show you an individual overtime report,
3 Exhibit PP-4D for this date -- 4E. I'm sorry.

4 **THE CLERK:** Did you say E?

5 **MR. HINES:** E.

6 **THE CLERK:** Okay. Thank you.

7 **MR. HINES:** Thank you.

8 **BY MR. HINES:**

9 **Q.** Is this in reference to a mandatory 12-hour shift that you
10 said that you worked on this day?

11 **A.** Yes. Yes.

12 **Q.** It says -- on the right-hand side does it say, "Other
13 Shift, 3 p.m. to 11:00 p.m."?

14 **A.** Yes.

15 **Q.** And then a total of four hours of overtime in addition to
16 that?

17 **A.** Yes.

18 **Q.** Did you work any of that time?

19 **A.** I don't think -- I don't believe so, no.

20 **Q.** And is this July 23rd date the same date as the call I
21 just played between you and Gondo?

22 **A.** Yes.

23 **MR. HINES:** If we can go back to that call for a
24 second, Mr. Kerrigan. Page 14. If you can continue playing
25 where you left off.

1 (Audio was played but not reported.)

2 **BY MR. HINES:**

3 **Q.** So, Mr. Rayam, in this call there's discussions of "y'all
4 too and Gondo and Wayne." Is there any mention of Hersl or
5 Taylor working?

6 **A.** No, there wasn't no mention of that. But as you say, I
7 missed it earlier, but it was Wayne that he was working with.

8 **Q.** He was working with Wayne?

9 **A.** Yes.

10 **Q.** So was it your understanding that Hersl or Taylor were
11 working that day?

12 **MR. PURPURA:** Judge, objection, again, as to the
13 leading nature of these questions is what --

14 **THE COURT:** Overruled.

15 **MR. PURPURA:** -- do you know, rather.

16 Thank you.

17 **THE WITNESS:** I don't know. I don't know, if I'm
18 honest.

19 **BY MR. HINES:**

20 **Q.** Now, directing your attention to Page 24 of the
21 transcripts, there's a call dated July 29th, 2016, at
22 9:38 p.m.?

23 **MR. HINES:** Mr. Kerrigan, if you could please play
24 this call.

25 (Audio was played but not reported.)

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1 **BY MR. HINES:**

2 **Q.** Mr. Rayam, who are you speaking with on this call?

3 **A.** Gondo.

4 **Q.** And can you sort of generally summarize what you and him
5 are talking about.

6 **A.** Just Taylor coming in -- well, not coming into work or
7 coming into work late, actually, and not for the assigned
8 shift. And just everyone else pretty much as a squad just
9 coming into work and then leaving early as well or splitting
10 our shifts up.

11 **Q.** And directing your attention to the top of Page 24, when
12 Gondo says, "He just got here at 9:40," who is the "he" that
13 he's referencing?

14 **A.** Taylor.

15 **Q.** And then turning to the following page on Page 25 --

16 **MR. HINES:** Near the bottom, Mr. Kerrigan.

17 **BY MR. HINES:**

18 **Q.** -- Gondo says, "You six hours. Your shift is 3:00 to
19 3:00. You six hours late on top of that."

20 What did you understand that to mean?

21 **A.** Yeah. Our shift was 3:00 to 3:00 and he didn't come in
22 until six hours after that.

23 **Q.** And on the following page, Page 26, when Gondo says
24 [reading]: He went to PA. He was in PA, yo, when I was
25 sending you those text messages -- or those messages.

1 Who's the "he" that he's referencing?

2 **A.** Can you repeat that? I can read it again.

3 **Q.** Sure. When Gondo says [reading]: He went to PA. He was
4 in PA, yo, when I was sending you those messages --

5 **A.** Taylor.

6 **Q.** That's the "he" in that sentence?

7 **A.** Yes.

8 **Q.** And then on the bottom of Page 27, when you say [reading]:
9 I mean, 4 times 5 is 20. So that's, like I said, you were
10 going to get 40 hours a pay from now on; you feel what I mean?
11 But we gonna get more than that, of course.

12 What did you mean by that?

13 **A.** I just figured if 5 hours a day of overtime, then we'll be
14 able to get at least 20 hours -- well, and myself, I would be
15 able to get 20 hours. But I also knew that it's possible that
16 I can get more overtime than -- than -- than that.

17 **Q.** And is this an example of a day where you didn't even work
18 your assigned shift?

19 **A.** It could be a mixture of both work, coming in late -- not
20 working the assigned shift, but coming in late and doing it on
21 the overtime or, you know, just to make sure -- or coming in
22 and not doing all of the overtime that we had put on. Like,
23 say, if we did -- we put in for eight hours, probably only
24 stayed for two hours or so. So it's a mixture of everything.

25 **Q.** And I'll show you your overtime slip from this day, PP-5D.

1 And did you list an assigned shift of 3:00 to 11:00 plus
2 8 hours and 15 minutes of overtime?

3 **A.** Yes. Like I testified earlier, we all pretty much took
4 care of each other. So, you know, that's not even my
5 handwriting. But that's me saying, yes, I worked -- I knew
6 that the slip was being turned in. So --

7 **Q.** So did you know that someone was putting in a slip --

8 **A.** Yes.

9 **Q.** -- on your behalf?

10 **A.** Yes.

11 **Q.** And was it your -- who did you testify yesterday -- I
12 won't repeat what you said, but who did you say would do that
13 for you on your behalf?

14 **A.** Well, all of us. This one right here looks like Gondo'
15 handwriting. And the one before on Grindon Avenue, that looked
16 like Hersl' handwriting. So that's just like when I said I
17 could call John up or call Dan up or you could call someone
18 else or someone call me, you know, so --

19 **Q.** And did Hersl or Taylor or Gondo and others, did they ask
20 you to put in slips for them as well?

21 **A.** Yes, yes.

22 **Q.** For times that they didn't work?

23 **A.** Yes.

24 **Q.** Now, the call that I had just played for you, you said
25 that it was Taylor that didn't get there until 9:40 at night?

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1 **A.** Yes.

2 **Q.** If Taylor put in a slip for this day for 3:00 to
3 11:00 p.m. plus 8 hours and 15 minutes of overtime, would that
4 have been false?

5 **A.** Yes.

6 **Q.** I'll show you what's been admitted as
7 Government's Exhibit --

8 **MR. HINES:** Could you go to the slip for Mr. Taylor on
9 this pay period 5, 5B.

10 **BY MR. HINES:**

11 **Q.** And this is July 29th, the same date; is that right,
12 Mr. Rayam?

13 **A.** Yes.

14 **Q.** And does Mr. Taylor list his assigned shift as 3:00 to
15 11:00 plus 8 hours and 15 minutes of overtime?

16 **A.** Yes.

17 **Q.** Okay. I'd like to move on from showing you the overtime
18 slips but ask you some additional questions.

19 Do you recall being involved in a car chase and car wreck
20 on August 31st, 2016?

21 **A.** Yes. Yes.

22 **Q.** Can you describe what happened on that day.

23 **A.** It was myself and Gondo and Wayne and Hersl. And we were
24 at a gas station. Wayne pretty much always led the pack. You
25 can -- we called it the pack, as far as he led the group of

1 cars. And we pretty much just followed him, and he pretty much
2 initiated all the car stops.

3 So we saw a car at the gas station, and he attempted to
4 stop him. And the car took off, and Wayne followed. And Hersl
5 was in the car, and Gondo was driving the other vehicle. And
6 I -- and, you know, I was the passenger, so we all followed.

7 And it was raining out. And the car wound up turning off
8 on another street, and then it ran a red light and hit -- well,
9 another vehicle hit the car that we were chasing and caused an
10 accident.

11 **Q.** What happened to the driver of the car that got in the
12 accident?

13 **A.** It was bad. It was a bad accident. It was -- it was real
14 bad. And none of us -- none of us stopped. I don't know -- I
15 mean, none of us stopped to render aid or to see if anyone was
16 hurt. We just listened to the radio and -- to see if someone
17 would call it in.

18 And then once we heard someone called it in, then, you
19 know, we just continued to -- just to drive on. Wayne didn't
20 want to -- he didn't want us to do anything.

21 **Q.** Why didn't any of you stop to render aid?

22 **A.** 'Cause we were foolish. I don't know. We just didn't.

23 I -- I had mentioned that we should stop to see if anyone
24 was hurt because I saw it, and it was -- it was pretty bad.

25 And -- and it could have been any of us. It could have been

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1 any of you guys or my mother or father. And -- but we just --
2 we just didn't stop.

3 **Q.** I'm going to play for you an audio recording from the
4 vehicle that you were in and Mr. Hersl was in. It's Exhibit --
5 it's Page 1 of FBI-11, I believe.

6 **MR. HINES:** Is that right, Mr. Kerrigan?

7 If you can zoom in on the top, Mr. Kerrigan.

8 **BY MR. HINES:**

9 **Q.** Is this -- is the date, Mr. Rayam, August 31st, 2016, the
10 same night as the vehicle accident?

11 **A.** Yes.

12 (Audio was played but not reported.)

13 **MR. HINES:** Stop it right there, Mr. Kerrigan.

14 **BY MR. HINES:**

15 **Q.** When there's some cursing going on and then when Mr. Gondo
16 says, "We may have to help out," what has happened at this
17 point?

18 **A.** The car accident.

19 **Q.** Did you see the car accident?

20 **A.** Yes.

21 **Q.** And when you said, "It was bad," earlier, can you describe
22 it?

23 **A.** It's just like the vehicle that we were chasing ran the
24 light, and then another vehicle came and just pretty much
25 T-boned -- I believe T-boned the vehicle.

1 But I know both of them came -- collided with each other.
2 And it seemed as if the vehicles went on the curb, on the
3 sidewalk.

4 **MR. HINES:** And if you go to the previous page,
5 Mr. Kerrigan, and zoom in on the participant section on the
6 top.

7 **BY MR. HINES:**

8 **Q.** Who's in the vehicle with you, Mr. Rayam?

9 **A.** All right. So it was -- I believe it was just me and
10 Gondo in one vehicle. And it had to be Taylor, Wayne, and
11 Hersl in the other vehicle.

12 **Q.** And when you go to the -- below it where it says -- when
13 Hersl says, "Might be able to get something dirty," was Hersl
14 in your vehicle or is that radio chatter coming over into your
15 vehicle?

16 **A.** I believe that could have been radio chatter. I -- I
17 don't think Hersl was in our vehicle -- in our vehicle. I -- I
18 just -- I know I was in the front seat, and Gondo was driving.
19 But I can't recall if he was in our vehicle.

20 **Q.** And when Hersl says, "Get in, Taylor. Get in," was Taylor
21 also involved in this episode?

22 **A.** Yeah, he -- he must have -- that must have been another
23 voice from the vehicle saying, "Get in," get into the other
24 vehicle.

25 **MR. HINES:** All right. And if we go back to Page 2

~~RAVAN DIRECT~~

1 and continue the recording, please, Mr. Kerrigan.

2 (Audio was played but not reported.)

3 **MR. HINES:** Can you stop it right there, Mr. Kerrigan.

4 **BY MR. HINES:**

5 **Q.** So when Hersl says [reading]: Yeah, that's in the county,
6 G, and laughs, what did you understand that to mean?

7 **A.** I don't know. I can't -- right now my mind isn't -- I
8 can't really think of what he meant to say right there.

9 **MR. HINES:** Okay. And if you continue playing the
10 call, Mr. Kerrigan.

11 (Audio was played but not reported.)

12 **MR. HINES:** Pause it right there.

13 **BY MR. HINES:**

14 **Q.** And when Hersl said, "Oh, he stopped?" what did you
15 understand that to be asking?

16 **A.** You know, I'm sorry. Could you -- there was so many car
17 accidents. Could you just refresh my memory as far as the
18 location of this one or . . .

19 **Q.** Do you remember the car accident by -- downtown by the
20 University of Maryland?

21 **A.** Yes. This -- okay. It's just when the county mentioned,
22 I'm like, did we have one in the county? But okay.

23 **Q.** Were there multiple other car accidents like this one
24 which your unit was involved in?

25 **A.** Yeah. Chases and everything, yes.

~~RAYAM DIRECT~~

1 Q. Were Mr. Hersl and Mr. Taylor --

2 MR. PURPURA: Objection, Judge. Objection.

3 THE COURT: Sustained.

4 BY MR. HINES:

5 Q. Now, my previous question, Mr. Rayam, when Hersl says,
6 "Oh, he stopped," and questions that, what did you understand
7 that to mean?

8 A. I can't -- I don't know. I can't really remember.

9 Q. And when Hersl says, "Oh, it's a hundred percent in that
10 car, I told you," what did you understand that to mean?

11 A. It's something in the vehicle.

12 Q. And what is that something?

13 A. Oh, could be -- I don't recall getting anything, but it
14 could be a gun, money, or drugs.

15 Q. And I think you testified to this yesterday, but what
16 happened when you guys found money?

17 A. When we normally do find money, we would -- we'd take some
18 or tax 'em or take a little bit of it.

19 MR. HINES: Continue with the recording, Mr. Kerrigan.

20 (Audio was played but not reported.)

21 MR. HINES: You can pause it right there.

22 You can go back to zoom in on that section,
23 Mr. Kerrigan.

24 BY MR. HINES:

25 Q. When you say, "Go back. We're recorded," and Hersl says,

1 "Nah, no. We didn't chase," what did you understand that to
2 mean?

3 **A.** Basically saying -- asking each other if, you know, there
4 were cameras on the street and if -- if, you know, anyone would
5 have saw us or any cameras would have saw us. And --

6 **Q.** Did you want to go back?

7 **A.** Yes. I wanted to get on the air at least, hurry up and
8 get some help, although, like I said, you can hear initially we
9 didn't take serious to it. But I kind of just wanted to be
10 like, well, let's just see what's in the car and let's kind of
11 just -- just something to where we can get some help. But as
12 you can see, it was like "no," you know.

13 **Q.** And what did you observe regarding the state of the victim
14 who had crashed at this point?

15 **A.** It was bad. It was real bad. It was -- it was bad.

16 **Q.** Does that -- does "bad" mean serious injuries?

17 **A.** From -- from my view, yes.

18 **MR. PURPURA:** Judge, objection; basis of knowledge as
19 well.

20 **THE COURT:** Sustained.

21 **MR. PURPURA:** Thank you.

22 **BY MR. HINES:**

23 **Q.** On the bottom of this when Mr. Hersl says, "No," Wayne
24 said, "I wouldn't say nothin' yet. We didn't run lights up,"
25 what did you understand Hersl to be saying?

1 **A.** Just don't say anything yet. Just wait and see if, you
2 know, other vehicles -- well, other help would come somewhere
3 else instead of from us.

4 **Q.** Did you and the other members of the unit wait?

5 **A.** We waited some time, yes, yes. We waited. And eventually
6 I think a University of Maryland Hospital or another police
7 officer in the area saw it and called it in, and they were able
8 to get a ambulance there after a while.

9 **Q.** And why didn't you call it in?

10 **A.** One, because, you know, Wayne said, "No, don't do it."
11 And everybody was like, "Don't -- don't do it. Just wait."
12 And two was because I was being a follower, and I should have
13 called it in and I just didn't.

14 **MR. HINES:** Continuing with the rest of that segment
15 there.

16 (Audio was played but not reported.)

17 **MR. HINES:** And if we'll continue to the next section,
18 Mr. Kerrigan, please.

19 (Audio was played but not reported.)

20 **MR. HINES:** You can pause it right there,
21 Mr. Kerrigan.

22 **BY MR. HINES:**

23 **Q.** When Hersl brings up CityWatch, what did you understand
24 that to be a reference to?

25 **A.** Just CityWatch cameras being in the area. And it was

1 possible that since there was a car accident, CityWatch can go
2 back and see, you know, how it happened. And if they did, then
3 they would have saw our vehicles chasing the vehicle and what
4 actually caused the accident.

5 **Q.** And is that why you wanted to go back?

6 **A.** Yes. Well, two reasons. I wanted to go back just to
7 check on 'em, and I wanted to go back because we can get in
8 trouble. I mean, although I was doing so much wrong, it was
9 just to a certain point where like too much is too much.

10 And, you know, it's just when -- just too much was too
11 much. And all of us was just as guilty as --

12 **MR. PURPURA:** Objection, Judge, again.

13 **MR. HINES:** I'll move on.

14 **THE COURT:** Sustained.

15 **BY MR. HINES:**

16 **Q.** When Taylor -- directing your attention two-thirds of the
17 way down the page, when Taylor said, "That dude unconscious.
18 He ain't sayin' shit," what did you understand that to mean?

19 **A.** Meaning like he's not going to say anything. He's not
20 going to know -- well, he -- meaning he won't say police was
21 chasing him, you know, and he may forget; or, you know, we
22 don't have anything to worry about.

23 **MR. HINES:** You can continue playing the call,
24 Mr. Kerrigan.

25 (Audio was played but not reported.)

~~RAYAM DIRECT~~

1 **BY MR. HINES:**

2 **Q.** Mr. Rayam, does Hersl say, "These car chases, this what
3 happens. It's a crapshoot, you know"?

4 **A.** Yes.

5 **MR. HINES:** And now continuing on to the next part of
6 the recording, Mr. Kerrigan.

7 (Audio was played but not reported.)

8 **BY MR. HINES:**

9 **Q.** All right. On the bottom of Page 4, when Daniel Hersl
10 says, "We could go and stop the slips at 10:30 before that
11 happened," what did you understand him to be saying?

12 **A.** Stop the slips at -- before the accident happened, and
13 that way if it came back to where our cars were possibly at the
14 location to cause the accident, then we can say our slips were
15 over at 10:30 and that we weren't at work, so to cover it up.

16 **Q.** So was this a suggestion to put in a false slip to cover
17 up for being in the chase?

18 **A.** Yes. Yes, it was.

19 **Q.** If you'd turn to the following page, Page 5. I just want
20 to play this one more time. Just one portion here.

21 (Audio was played but not reported.)

22 **MR. HINES:** All right. You can pause it,
23 Mr. Kerrigan.

24 **BY MR. HINES:**

25 **Q.** Does Daniel Hersl say, "Hey, I was in the car just driving

~~RAVAN DIRECT~~

1 home," and then laugh?

2 **A.** Yes.

3 **Q.** Does Daniel Hersl say [reading]: Hey, you, hey, listen.
4 Listen. Where he got in the accident --

5 **MR. PURPURA:** Objection.

6 **THE COURT:** Can I see counsel at the bench, please.

7 **MR. HINES:** Yes.

8 (Bench conference on the record:

9 **THE COURT:** I really don't see why we're repeating
10 this five times.

11 **MR. HINES:** So I was just going to repeat it this one
12 time, which I played the recording.

13 **THE COURT:** You've played the recording now twice.
14 We've all heard it. It's the transcript. People have read it.
15 I just don't see why we're going over this again.

16 **MR. PURPURA:** And it's in English. It's not in code.

17 **MR. HINES:** Just sometimes the transcripts, the audio
18 doesn't come up, so --

19 **THE COURT:** Okay. Well, I think this -- we've heard
20 enough.

21 **MR. HINES:** Okay.)

22 (Bench conference concluded.)

23 **THE COURT:** All right. Let's just move on, Mr. Hines.

24 **MR. HINES:** Yes, Your Honor.

25 **BY MR. HINES:**

~~RAYAM DIRECT~~

1 **Q.** Mr. Rayam, were you, in fact, just driving home on this
2 occasion?

3 **A.** No.

4 **MR. HINES:** No further questions, Your Honor.

5 **THE COURT:** All right. Then could I see counsel again
6 at the bench for just a minute.

7 (Bench conference on the record:

8 **MR. HINES:** Sorry. I should have said that to the
9 Court when I was -- before that was my last question.

10 **THE COURT:** Just schedule, do you want to go into
11 cross for about 15 minutes?

12 **MR. PURPURA:** It makes sense to take a break.

13 **THE COURT:** Okay. All right. And let's think
14 tactically a little bit about -- in terms of calling in the
15 alternate juror, I guess we could do that at the very --
16 immediately after the break.

17 It is going to be obvious that we are having a juror
18 up here. So that's just something else to think about over the
19 break, and you can let me know when we come back as to what you
20 want to do.

21 **MR. HINES:** Thank you, Your Honor.

22 **THE COURT:** Okay.)

23 (Bench conference concluded.)

24 **THE COURT:** All right. So, ladies and gentlemen,
25 we're going to take the break just a little bit early, and then

1 we'll have cross-examination. You're excused for now.

2 (Jury left the courtroom at 11:07 a.m.)

3 (Recess taken.)

4 (11:21 a.m.)

5 **THE COURT:** Counsel, approach the bench, please.

6 (Bench conference on the record:

7 **MR. WISE:** Mr. Purpura is not coming.

8 **THE COURT:** Okay. Shall we bring in Alternate No. 1?
9 Thoughts.

10 **MS. WICKS:** Yes.

11 **MR. WISE:** Yes.

12 **THE COURT:** Yes? Okay. Then let me ask if we can
13 just ask Alternate 1 to come in.

14 (Pause.)

15 **THE COURT:** Hi.

16 **JUROR:** Hello.

17 **THE COURT:** So, for the record, you are Alternate
18 Juror No. 1?

19 **JUROR:** Yes.

20 **THE COURT:** And I just wanted to put something on the
21 record --

22 **JUROR:** Yes.

23 **THE COURT:** -- that we were advised, and I appreciate
24 your coming forward with.

25 **JUROR:** Yes. I'm so sorry.

1 **THE COURT:** Just tell me if this is correct; you can
2 add anything to it. What I understand from our courtroom
3 deputy, Ms. Moyé, is that --

4 **JUROR:** Yes.

5 **THE COURT:** -- you came forward to her this morning --

6 **JUROR:** Yes, yes.

7 **THE COURT:** -- and said that you had looked something
8 up.

9 **JUROR:** Yes.

10 **THE COURT:** Would you like to just tell us --

11 **JUROR:** I looked up the definition of the word
12 "racketeering."

13 **THE COURT:** Okay. How did you look it up?

14 **JUROR:** On my phone.

15 **THE COURT:** On your phone. Okay.

16 And then what?

17 **JUROR:** That was it.

18 **THE COURT:** Okay. Do you recall what you read?

19 **JUROR:** Yes. I think it said, like, when a group of
20 people act together to commit a crime, something like that.

21 **THE COURT:** Something like that.

22 **JUROR:** And it reminded me of what -- and I went, Oh,
23 I heard that; that's what it was, in court.

24 **THE COURT:** Okay. You recall hearing that. When did
25 you recall hearing it?

1 **JUROR:** I think in the opening statements when the
2 charges were read.

3 **THE COURT:** Okay. All right. I will just ask
4 counsel: Do you want any additional factual information about
5 this?

6 **MS. WICKS:** No, Your Honor.

7 **MR. WISE:** No. Thank you.

8 **MR. RAFTER:** No.

9 **THE COURT:** Okay. Can I ask you to just step over
10 there again for a minute.

11 Okay. Counsel, one other thing I'll verify: Ms. Moyé
12 said that she didn't discuss this with anyone else on the jury.
13 Assuming that's her answer, are you comfortable with leaving
14 her on with an instruction, you know, never to do this again?
15 Or do you have different feelings about it?

16 **MS. WICKS:** I'm comfortable.

17 **THE COURT:** Everybody's okay?

18 **MR. RAFTER:** That's fine, Your Honor.

19 **MR. WISE:** Yes.

20 **THE COURT:** All right. Hi. Just one other thing I
21 forgot to clarify. I understand also that you did not tell
22 anybody else on the jury?

23 **JUROR:** I did not.

24 **THE COURT:** Okay. Great.

25 All right. Well, here's what we would say, is: Thank

1 you for letting us know you did that. Don't do it again.

2 **JUROR:** Got you.

3 **THE COURT:** I'm sure you can understand why it's
4 important.

5 **JUROR:** Right. So I -- the reason I -- I just was
6 reading the juror handbook. And that's when I said, Oh, a
7 definition, not -- yeah, that counts. So I got it.

8 **THE COURT:** Okay.

9 **JUROR:** It makes sense.

10 **THE COURT:** Great. So you think for the rest of the
11 time that you remain on the jury that you can refrain from
12 doing any investigation on the Internet or otherwise?

13 **JUROR:** Yes.

14 **THE COURT:** All right. Again, just please don't
15 discuss this with anybody else on the jury, and you can go back
16 and continue. Thanks.

17 If that's all right, then we'll go ahead and move on.)

18 (Bench conference concluded.)

19 **THE COURT:** All right. We'll bring in the jury.

20 (Jury entered the courtroom at 11:28 a.m.)

21 **THE COURT:** All right. You can all be seated.

22 **THE CLERK:** Sir, you're still under oath.

23 **THE WITNESS:** Yes, ma'am.

24 **THE COURT:** Mr. Purpura.

25 **MR. PURPURA:** Your Honor, thank you.

CROSS-EXAMINATION

BY MR. PURPURA:

Q. Mr. Rayam, let me go right -- right to the conversation you just left off, August 31st, 2016. We just played some recordings.

Do you remember that, sir?

A. Yes.

Q. Okay. And in particular, what's happened this night, Jenkins is in the lead car; is that correct?

A. Correct.

Q. And in the trail car, there's actually four people in the trail car, as we can tell from the conversation. Gondo is driving. You're the passenger, I believe, on the right-hand side -- or, actually, Taylor is probably the passenger on the right-hand side.

Do you remember that?

A. I actually would like to clarify that, yeah, from the conversation. I know that we all was there, and I could have gotten the --

Q. It's okay.

A. -- the --

Q. Seating wrong --

A. -- the seating arrangements in the vehicle --

Q. Why don't you tell us quickly --

THE COURT: Wait. Wait.

~~KAYAN~~ ~~CROSS~~

1 **BY MR. PURPURA:**

2 **Q.** -- who was in the car.

3 **MR. PURPURA:** I'm sorry. I was just trying to --

4 **THE COURT:** I'm sorry. You were just talking over
5 each other.

6 **MR. PURPURA:** I'm trying to get him to cut to the
7 chase.

8 **THE COURT:** I understand. But we need just one at a
9 time.

10 **BY MR. PURPURA:**

11 **Q.** Who's in the car?

12 **A.** You know what? Actually, honestly, I know that -- I don't
13 remember exactly who was in the vehicle. I know that Wayne was
14 driving a car. I know that Gondo was driving a vehicle. And I
15 believe that I was in the passenger side.

16 **Q.** Okay. And --

17 **A.** Listening to the further recording, it seems as if Taylor
18 could have -- also have been in our vehicle as well.

19 **Q.** And Hersl too; correct?

20 **A.** It's a possibility. It's a possibility. I'm not certain.

21 **Q.** Fair enough.

22 But the bottom line is that you know that the vehicle that
23 Wayne was driving, that was the chase vehicle; is that correct?

24 **A.** Yes.

25 **Q.** And as you indicated to the jury, that's what happens

~~KAYAW~~ ~~CROSS~~

1 often. He's -- he's the chase person; correct?

2 **A.** Yes.

3 **Q.** And this is not unusual, what happened on August 31st of
4 2016, when Wayne believes that there's a narcotics transaction
5 going down and he takes off; correct?

6 **A.** Correct.

7 **Q.** Now, the -- part of the problem is that, number one, it
8 was raining out; right?

9 **A.** Yes.

10 **Q.** And it makes it more dangerous; correct?

11 **A.** Yes.

12 **Q.** And, number two, there's a rule the Baltimore City Police
13 have about city chases; correct?

14 **A.** Yes.

15 **Q.** What you're supposed to do in a situation like that would
16 be to call in to a lieutenant or someone higher and to get
17 permission, tell them what's going on. And he or she would
18 then say, "Cut off the chase," or, "Continue," something like
19 that; is that correct, sir?

20 **A.** I believe at that time it was no -- a no-chase policy, so
21 we weren't even able to chase a vehicle.

22 **Q.** All right. And so you knew what you were doing is, in
23 essence, a police protocol rule that was being broken; correct?

24 **A.** Correct.

25 **Q.** And that's what you all were concerned about. You all

1 were talking about at the end, all about, you know, about
2 cameras and they'll follow us and they'll tell we're here;
3 correct?

4 **A.** Correct.

5 **Q.** But what you intended to do, at least in the beginning, it
6 looked like Jenkins was trying to do a police stop of what he
7 projected to be either a drug trafficker or someone carrying a
8 gun; is that correct?

9 **A.** That was his assumptions, yes.

10 **Q.** Okay. And as you indicated before, Jenkins does this
11 stuff way too often, correct, or he was doing that often?

12 **A.** Yes.

13 **Q.** And that's kind of why I think you testified or others --
14 why you picked up so many guns when you worked with Jenkins,
15 because he was -- not only was he citywide, but he was very
16 proactive, so to speak, in his police techniques; correct?

17 **A.** He was very, yeah, proactive, aggressive.

18 **Q.** Yeah. All those things?

19 **A.** All those things.

20 **Q.** And doing wrong things too; right?

21 **A.** Correct.

22 **Q.** And, as a matter of fact, in the conversation -- I'm not
23 sure the Government highlighted this part, but we're going to
24 go to Page 4 of that conversation. I've put in yellow there,
25 Hersl is talking to Gondo; is that correct?

~~KAYAW~~ ~~CROSS~~

1 A. Yes.

2 Q. G is Gondo; right?

3 A. Yes.

4 Q. And Hersl says [reading]: See, G, that's the thing with
5 Wayne. He's a little too much with this shit, you know.

6 What does that mean to you?

7 A. Wayne is a little too much. He's just too aggressive and
8 just -- just too much.

9 Q. Okay. Now, he was your sergeant on August 31st; correct?

10 A. Yes.

11 Q. You were all still following orders from your sergeant
12 August 31st; correct?

13 A. Yes.

14 Q. Now, did Jenkins or Hersl or you, did you ever file any
15 false reports and date your time slips back to 10:30 on that
16 night?

17 A. You know, I can't recall.

18 Q. But to the best of your knowledge, you didn't do that, did
19 you?

20 A. I don't -- I don't recall.

21 Q. Now, you also testified about a storage locker incident
22 involving Mr. Summerville. I think his name is Summerville.

23 Do you remember that?

24 A. Yes.

25 Q. Okay. And the Government showed you some photographs;

~~RAYAM~~ ~~CROSS~~

1 correct?

2 **A.** Yes.

3 **Q.** And at this storage locker incident involving
4 Mr. Summerville, literally the whole squad was there: Gondo,
5 Rayam, you, Hendrix, Taylor, Hersl, Jenkins; right?

6 **A.** Yes.

7 **Q.** And you even identified a photograph of at that time
8 Detective Hersl -- it should zoom in eventually.

9 And you identified that photograph as Detective Hersl;
10 correct?

11 **A.** Yes.

12 **Q.** Now, Detective Hersl was part of the stop, is that fair to
13 say, part of getting Mr. Summerville and the passenger out of
14 the car; correct?

15 **A.** Yes.

16 **Q.** And I believe that incident, there was some marijuana that
17 was actually found in the car; is that correct?

18 **A.** That's possible, yes.

19 **Q.** As a matter of fact, that's what you told the Government
20 when you met with them on March 21st, 2017, which would be much
21 closer to the incident. You said there was marijuana found in
22 the car; right?

23 **A.** I just said that, yes.

24 **Q.** Okay. And what happened when you released everybody, you
25 actually -- you didn't turn the marijuana in. It was just

~~KAYLA~~ ~~CROSS~~

1 thrown out; right?

2 **A.** Correct.

3 **Q.** Okay. And that's 'cause you didn't find a gun at that
4 point; correct?

5 **A.** No, we didn't find a gun. I didn't find a gun.

6 **Q.** And what you told this jury is that the -- you received --
7 you stole some money that night; right?

8 **A.** Yes.

9 **Q.** And some money was given to Jenkins; correct?

10 **A.** No. That was just a -- I said that just as a coverup to
11 Gondo so I wouldn't -- so I didn't have -- I didn't give him
12 any money, so I wouldn't feel like -- I don't have to split any
13 money with him.

14 **Q.** You didn't give Gondo any money; right?

15 **A.** No.

16 **Q.** And you gave it to one other person, you said; correct?

17 **A.** Correct.

18 **Q.** That person wasn't Mr. Hersl; correct?

19 **A.** No.

20 **Q.** And when you give money, you don't do it out in the open
21 like in front of everybody, do you?

22 **A.** No.

23 **Q.** You kind of do it secretly; correct?

24 **A.** Yes; amongst the individuals that's involved. Yes.

25 **Q.** Right. And the individuals that were involved were you

~~RAYAM~~ ~~CROSS~~

1 and the person you gave money to that particular night, the
2 Summerville incident; correct?

3 **A.** Yes.

4 **Q.** So you didn't want to show it in front of anyone else, did
5 you?

6 **A.** I didn't.

7 **Q.** When you testified yesterday, you testified about
8 Westminster; correct? Do you remember that?

9 **A.** Yes.

10 **Q.** And one of the things you testified is that you actually
11 seized the money, the \$20,000; correct?

12 **A.** Correct.

13 **Q.** And you took that money, and you took that money
14 downstairs. And then you took that money out to the police car
15 that you and Gondo drove up in on that particular night;
16 correct?

17 **A.** Correct. Yes.

18 **Q.** And that you -- meaning Mr. Rayam -- put that money under
19 the passenger seat; correct?

20 **A.** I could have said "passenger seat," but I believe it was
21 the -- I probably said the front passenger, but it was the
22 front seat, yes.

23 **Q.** But you, wherever you --

24 **A.** I did, yes.

25 **Q.** -- you're the one that did that; correct?

~~KAWA~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** But what you testified to yesterday was -- and correct me
3 if I'm wrong -- what you say, after you seized that money, you
4 took that money, you look at Hersl. And he gave you a nod like
5 it's okay (indicating); right?

6 **A.** No, I didn't say that.

7 **Q.** What did you say?

8 **A.** I basically said sometime after in between that pretty
9 much everybody -- I didn't know the exact words, but everybody
10 knew that I had took the money. Like I was like, "Hey, I got
11 it." But it wasn't like right directly as I was taking the
12 money, 'cause as soon as I took the money, I went straight to
13 the car.

14 **Q.** Right. So you didn't show the money to Hersl that you had
15 in your hand, and he didn't nod (nods head), say like an okay;
16 right?

17 **A.** I never testified that I showed him, showed anybody money.
18 I just said I had the money; I took the money.

19 **Q.** You took the money --

20 **A.** Yes.

21 **Q.** -- and you took it to the car right?

22 **A.** Yes.

23 **Q.** And you didn't want -- you didn't want the homeowners to
24 know that you took the money at that point, did you?

25 **A.** No.

~~KATAM~~ ~~CROSS~~

1 Q. The Hamiltons; correct?

2 A. Correct.

3 Q. You also testified yesterday about an incident, and you
4 remember the incident because you identified the incident as
5 the very first day that Jenkins came on the squad.

6 Do you remember that?

7 A. Yes.

8 Q. And that would be June 13th of 2016; correct?

9 A. Yes.

10 Q. And that's when John Clewell wrote a warrant, I believe,
11 as a result of a car stop; correct?

12 A. Correct.

13 Q. And that's what John Clewell did. He wasn't one of the
14 guys who were out chasing. He was -- he wrote a lot of
15 warrants for people; fair to say?

16 A. Yes.

17 Q. And then there was a -- so this warrant and
18 John Clewell -- correct me if I'm wrong -- this would have been
19 a truthful affidavit and warrant; correct?

20 A. Yes.

21 Q. So to the best of your knowledge and to the best of --
22 well, strike that.

23 To the best of your knowledge, John Clewell was honest and
24 truthful in preparing that warrant; right?

25 A. Yes.

~~KAYAW~~ ~~CROSS~~

1 Q. And there was probable cause to search the house; is that
2 correct?

3 A. Yes.

4 Q. And a judge here in Baltimore City confirmed that there
5 was probable cause to search the house; correct?

6 A. Yes.

7 Q. And with that warrant, then you all had authority to be
8 inside that house; correct?

9 A. Yes.

10 Q. And the person who was in the car who was the subject of
11 that warrant, he was arrested a long time before you actually
12 executed the warrant; correct?

13 A. Yes.

14 Q. So at the time when you're executing that warrant, that
15 person has already been in that police car and taken down to
16 Central Booking center, 'cause that's where you take 'em;
17 right?

18 A. I just want to be clear. He could have been at the
19 district, or he could have been at Central Booking. I just
20 don't remember.

21 Q. So to be -- I know you're trying to be completely honest.
22 So they could have taken him to the district, the district that
23 you're all in at that point; correct?

24 A. Yes.

25 Q. And they have holding cells there.

~~RAYAM~~ ~~CROSS~~

1 A. Yes.

2 Q. And they can hold him there for a period of time and then
3 transport him to Central Booking center; correct?

4 A. Yes.

5 Q. Okay. And Central Booking center is, as the name
6 suggests, the Central Booking center for people who are
7 arrested here in Baltimore City on state charges; correct?

8 A. Yes.

9 Q. So he's not present. He's lawfully taken to wherever he's
10 being detained awaiting to go to Central Booking center when
11 you're executing a lawful search warrant; correct?

12 A. Correct.

13 Q. And the people at the house at that time were whom?

14 A. It was myself, Hersl, Wayne Jenkins, Taylor, and Hendrix.
15 Clewell came a little bit after.

16 Q. Yesterday you mentioned Ward as well.

17 A. And Ward. I'm sorry. Yes.

18 Q. So everybody was there?

19 A. Except Gondo.

20 Q. Except Gondo?

21 A. Yes.

22 Q. So you had Clewell, Jenkins, Hendrix, Ward, Taylor, and
23 Rayam?

24 A. Yes.

25 Q. And you're conducting a search; correct?

~~KAWA~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** And according to you, according to you -- and just before
3 we do that, before -- before Hersl came to the GTTF, did you
4 know him?

5 **A.** No, I didn't know, like, him personally, no.

6 **Q.** All right. You didn't have his phone number?

7 **A.** No.

8 **Q.** You didn't go out drinking with him?

9 **A.** No.

10 **Q.** You didn't have any actual -- even any police work with
11 him before he came to the GTTF in 2016; right?

12 **A.** No.

13 **Q.** So you've known him now for a couple months; correct?

14 **A.** Correct.

15 **Q.** And according to you, what you testified to this jury is
16 at that point Hersl says something to you like, If you -- let
17 me know if you find any money; right?

18 **A.** Correct. We had a discussion about if there was any money
19 to be found, that we would split it up.

20 **Q.** Okay. And was Ward there when this conversation went on?

21 **A.** No.

22 **Q.** Was Hendrix there when this conversation went on?

23 **A.** No.

24 **Q.** Was Jenkins there when this conversation went on?

25 **A.** No.

~~KATAM~~ ~~CROSS~~

1 Q. Was Taylor there when this conversation went on?

2 A. No.

3 Q. Just you?

4 A. Yes.

5 Q. And is there any corroboration other than what you have to
6 say?

7 A. I'm just being truthful.

8 Q. Okay. Well, we'll talk about truthful in a while, but --

9 A. Okay.

10 Q. -- is there any corroboration other than what you have to
11 say?

12 A. Someone to corroborate it? No. Just -- it was just
13 myself and Hersl there.

14 Q. Was there any money seized?

15 A. No.

16 Q. Anybody complain about money missing?

17 A. To the best of my knowledge, no.

18 Q. Do you know what they found?

19 A. Yeah. We found a substantial amount of drugs and guns.

20 Q. Just one second.

21 And these were seized, and they were brought into
22 Property; correct?

23 A. Yes.

24 Q. ECU, Evidence Control; correct?

25 A. Yes.

~~KAYAN~~ ~~CROSS~~

1 Q. You or Hersl didn't steal any drugs, did you?

2 A. No.

3 Q. You didn't steal any guns, did you?

4 A. No.

5 Q. And before that time, you were involved in selling drugs
6 which were stolen from houses such as this; right?

7 A. Correct.

8 Q. But you didn't take any this time?

9 A. No.

10 Q. Now, the very first day that Jenkins came on, the very
11 first day, not the second day, but the very first day, he
12 indicated that there was a big drug trafficker that he was
13 interested in.

14 Do you remember that?

15 A. You know, I can't recall that particular conversation.

16 Q. He called -- he called the squad together. And he said,
17 There's a big-time person out there and you all -- you, Gondo,
18 and Hendrix -- actually went into the house before a warrant
19 was written and you stole \$1500.

20 Do you remember that?

21 A. I really don't. But if I did do that, I would be more
22 than willing to say that I did. But I don't recall that.

23 Q. Well, do you remember -- you know you met with Government
24 counsel (indicating); right?

25 A. Correct.

~~KAYAN CROSS~~

1 Q. And you met with Agent Jensen, and she was taking notes;
2 correct?

3 A. Correct.

4 Q. And on March 28th, 2017, was one of the days you met with
5 them; does that sound about right?

6 A. Okay. Okay.

7 Q. I'm going to approach for a second, and I'm going to have
8 you read -- this is marked for identification
9 Defense Exhibit No. 6 just for identification.

10 **MR. PURPURA:** Are you guys okay with that
11 (indicating)?

12 **BY MR. PURPURA:**

13 Q. I'm going to ask you just to read to yourself, not out
14 loud, this paragraph and then see if that paragraph refreshes
15 your recollection about this particular incident.

16 A. (Witness complies.)

17 Q. Are you finished?

18 A. Okay. Yeah. Yes.

19 Q. You read the paragraph?

20 A. Yes.

21 Q. Okay. And now do you remember this incident at all?

22 A. Yeah. You had kind of confused me 'cause I think you said
23 before he got to the squad, but that was after.

24 Q. One day after. I'm sorry. Apologize.

25 A. Was it one day? I don't know if that was one day after,

~~KAYAN~~ ~~CROSS~~

1 but okay.

2 Q. Do you remember the incident I'm talking about?

3 A. Yes.

4 Q. And this incident that -- Hersl was on the squad on
5 that -- at that time period; correct?

6 A. Correct.

7 Q. But the people that actually went in the house and stole
8 money at that time was yourself and Hendrix; is that correct?

9 A. Myself, Hendrix, and Gondo; correct.

10 Q. And Gondo?

11 A. Yes.

12 Q. And you all split that money amongst yourselves; correct?

13 A. Correct.

14 Q. And this is in June of 2016; correct?

15 A. I can't recall the date, but the --

16 Q. The day after Jenkins came to the squad would be June 17th
17 of 2016; sound about right to you?

18 A. Okay.

19 Q. Okay. And Hersl was a squad member, but he did not
20 partake in that money; is that correct, sir?

21 A. Correct.

22 Q. And you didn't give him any money that you took from
23 there, did you, sir?

24 A. No.

25 Q. Now, sir, you testified as well yesterday about Hersl

1 spending a month, a month -- God bless you -- a month at his
2 new house in Harford County, in Joppa, doing repair work.

3 Do you remember that?

4 **A.** Yes.

5 **Q.** Do you know if it was a month or maybe less?

6 **A.** Give or take. That's just what I was told. It was, give
7 or take, a month.

8 **Q.** Who told you?

9 **A.** Well, Hersl a couple times, then Wayne a couple times.

10 "Hey, what's up? Where you at?"

11 "I'm out fixing my house up," 'cause he just bought a new
12 house.

13 I'm like, "Okay."

14 **Q.** So they would tell you -- Hersl would tell you --
15 sometimes you'd look to see why he's not there. He would be
16 saying he'd be -- he was at his house, trying to fix it up; is
17 that fair to say?

18 **A.** Yes.

19 **Q.** And Jenkins, if you asked him, "Where's Hersl?" he'd say,
20 "Probably at his house, trying to fix it up"; right?

21 **A.** Well, I mean, it wasn't an everyday conversation, but
22 everybody just knew -- or I knew. I can't speak for everyone
23 else.

24 **Q.** So you don't know if it wasn't a month straight that he
25 was there, was he?

1 **A.** Give or take a couple days. I can't say if it was a
2 month, exactly 30 or 31 days.

3 **Q.** Can you say if it was a week or two weeks?

4 **A.** I just know that, you know, for some weeks, he wasn't at
5 work for quite -- you know, for about a -- approximately a
6 month, he wasn't at work. So whether he was at his house
7 fixing it up or driving around town --

8 **Q.** Do you know if he used a vacation time during that period
9 of time?

10 **A.** From -- no, I don't know.

11 **Q.** Okay. Do you know what a VMI time is?

12 **A.** Yes.

13 **Q.** What is it?

14 **A.** It's a vacation medical incentive.

15 **Q.** Okay. And tell the jury, what is that?

16 **A.** Vacation medical incentive is when you -- you work -- you
17 don't take off of work when you're sick for a whole year, and
18 the department rewards you with eight VMI days, so a vacation
19 medical incentive. So you get like an extra eight vacation
20 days. That's pretty much --

21 **Q.** And your year -- your fiscal year at the department is
22 from July to July; correct?

23 **A.** You know, I never knew what the fiscal year was, but I
24 just figure one year straight of not calling out.

25 **Q.** And then you get eight bonus days; right?

~~KATAM~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** And so you don't know if Jenkins -- or, excuse me, if
3 Hersl was repairing his home, if he was using VMI days; you
4 don't know that. You don't know if he's using vacation days;
5 you don't know that.

6 Correct?

7 **A.** Correct.

8 **Q.** And what are P days?

9 **A.** P days are personal days. It's like a holiday, Martin
10 Luther King, Election Day, Thanksgiving. P days, that's what
11 we call 'em.

12 **Q.** Why they give you P days in the department is because
13 normally on holidays like Christmas and Easter, you all
14 probably have to work. And so they allow you a holiday within
15 45 days before or after the P day; correct? You can use it
16 anytime?

17 **A.** Correct.

18 **Q.** So you can use your P day within 45 days of the actual
19 holiday; correct?

20 **A.** Yes. You can use your P days 45 days before the holiday,
21 45 days after. So if it was Christmas, 45 days before
22 Christmas, 45 days after Christmas, that's your -- the timeline
23 that you can use.

24 **Q.** Thank you.

25 Now, I'm going to move to 2010, 2012. When did you start

~~KATAM~~ ~~CROSS~~

1 Baltimore City Police Department?

2 **A.** 2005.

3 **Q.** So within four years of you becoming a Baltimore City
4 police officer, you had -- you were involved in an incident
5 which gained the attention of Internal Investigation; correct?

6 **A.** Correct.

7 **Q.** And that incident -- that incident involved a police
8 officer at that time by the name of Michael Sylvester; is that
9 correct, sir?

10 **A.** Correct.

11 **Q.** And what -- there was an allegation, at least an
12 allegation, that Michael Sylvester had improperly stopped a car
13 in Baltimore City and that you and another police officer
14 arrived at the scene to render aid, at least the officer who
15 stopped the car; is that correct?

16 **A.** Correct.

17 **Q.** And then according to at least the first statement, that
18 officer then, who was the first one there, waved you and your
19 partner at that time away. And he remained there; is that
20 right?

21 **A.** Yeah. We -- yes, I wound up leaving, yes.

22 **Q.** And so it turns out that the person that was stopped, who
23 was Gary Brown, that \$11,000 was stolen; right?

24 **A.** Correct. Yes.

25 **Q.** And when you first went into Internal Affairs and you

~~KAYAW~~ ~~CROSS~~

1 spoke to them, you indicated that you didn't know who the
2 officer was.

3 **A.** Yes, I did indicate that I didn't know who the officer
4 was, but I did know who the officer was.

5 **Q.** All right. So you -- we're going to get to that, but I
6 take it slow.

7 **A.** Okay.

8 **Q.** You lied to 'em; right?

9 **A.** Yes, I lied.

10 **Q.** As a matter of fact, they showed you or you were shown
11 cell phone records which showed that in the four months during
12 this incident, you had over 500 contacts with
13 Michael Sylvester.

14 Sound about right?

15 **A.** Yeah. They showed -- not the day I went down there
16 initially, but eventually they showed me cell phone
17 communication.

18 **Q.** And in particular on the very day of this incident, you
19 had 36 phone contacts with Michael Sylvester; right?

20 **A.** If -- I don't -- I don't know the exact amount, but I did
21 contact Michael Sylvester, yes.

22 **Q.** But you lied to Internal Investigation about that; right?

23 **A.** Yes, I did lie.

24 **Q.** As a matter of fact, they even showed you a six-pack.

25 What's a six-pack?

~~KATAM~~ ~~CROSS~~

1 **A.** It's a photo array -- arrayment of the possible suspects
2 that the -- that Internal Affairs were looking at; so, yes,
3 they did.

4 **Q.** And Michael Sylvester was one of those people in those
5 pictures; correct?

6 **A.** Yes.

7 **Q.** And you went to the academy with Michael Sylvester; right?

8 **A.** Yes.

9 **Q.** So you not only talked to him -- I was going to say a
10 billion, but that's an exaggeration. You not only talked to
11 him a lot, but you went to the academy with him. They show you
12 a six-pack of his pictures. And you picked out four pictures,
13 right, four pictures and said, "It could be any one of these
14 four'; right?

15 **A.** Yes.

16 **Q.** That's a whopper of a lie; right?

17 **A.** You're correct, sir. I admitted -- admitted to
18 everything.

19 **Q.** Now, did they ever ask you -- did you get some of that
20 money, that \$11,000?

21 **A.** Yes. I told 'em.

22 **Q.** And did you?

23 **A.** Yes.

24 **Q.** All right. When you went back the following year, when
25 you spoke again to Internal Investigation, you didn't tell 'em

~~KAYAW~~ ~~CROSS~~

1 you'd gotten any money from that incident, did you?

2 **A.** I don't recall if I did, no.

3 **Q.** You lied again about that. You did -- what you did tell
4 them is you recognize who Michael Sylvester is; you weren't
5 truthful; you could identify him; he was there, but I had
6 nothing to do with the incident.

7 Right?

8 **A.** Correct.

9 **Q.** And that was a lie a year later about the same incident;
10 right?

11 **A.** Correct.

12 **Q.** Sylvester resigned; correct?

13 **A.** I don't -- I know he's not with the department. I don't
14 know if he resigned or were fired, but --

15 **Q.** You got suspended for two years; right?

16 **A.** Correct.

17 **Q.** When you returned from that suspension, where did they
18 place you?

19 **A.** I was in the Gun Unit.

20 **Q.** And just one second. Go back. Back in 2009, when you got
21 a portion of that money that was taken, the \$11,000 taken from
22 that car, there was no Jenkins at that time, was there?

23 **A.** No.

24 **Q.** There was no Hersl at that time, was there?

25 **A.** No.

~~RAYAM~~ ~~CROSS~~

1 Q. There was no Taylor at that time, was there?

2 A. No.

3 Q. There was no Gondo at that time, was there?

4 A. No.

5 Q. It was just Rayam; right?

6 A. Yes, sir.

7 Q. I'm sorry. I interrupted you.

8 When you -- after 2012, where did you come to?

9 A. I was in the Gun Trace Task Force, the unit that I was in
10 when -- on March 1st when I got locked up, arrested.

11 Q. So after the suspension, Baltimore City Police -- after
12 you lied, Baltimore City Police places you in -- it's a fairly
13 elite task force, right, the gun -- at least it was supposed to
14 be, the Gun Trace Task Force; right?

15 A. Yes.

16 Q. Now, obviously to be fair to yourself and to be fair to
17 you, it's very dangerous out there doing what you were doing;
18 is that correct?

19 A. Yes.

20 Q. As a matter of fact, you were involved in -- you were
21 involved in a shooting in 2007; is that correct, sir?

22 A. Correct.

23 Q. You were shot at, and you returned fire; correct?

24 A. Yeah. I was shot and I returned fire, yes.

25 Q. And then again in 2007, I believe, this time you were

~~KATAM~~ ~~CROSS~~

1 dragged by a car?

2 **A.** Yes.

3 **Q.** And you shot the person who was dragging you; correct?

4 **A.** Yes.

5 **Q.** And then there was a third shooting, and that was when you
6 were protecting another Baltimore City police officer; is that
7 correct, sir?

8 **A.** Yes.

9 **Q.** And at that point you shot and you killed that person; is
10 that correct, sir?

11 **A.** Yes.

12 **Q.** There were three police-involved shootings within
13 20 months; is that correct, sir?

14 **A.** If that's the timeline, yes.

15 **Q.** But you did put yourself in harm's way, and that's the
16 result; is that correct, sir?

17 **A.** Yes.

18 **Q.** And as you told the Government, that when you are doing
19 what you're supposed to do as a Baltimore City police officer,
20 you can be and you were a good cop; is that fair to say?

21 **A.** Yes.

22 **Q.** And despite the fact that I think you've testified before
23 that you've been involved in at least 13 incidents that
24 involved 13 false reports, what's false in reports would be
25 that money's taken and/or the amount of money taken; is that

~~KAYAW~~ ~~CROSS~~

1 correct, sir?

2 **A.** Yes.

3 **Q.** You never once -- you never once falsified a report about
4 a gun, placing a gun in a car or placing drugs in a car; is
5 that correct, sir?

6 **A.** No.

7 **Q.** It was just about money; correct?

8 **A.** Yes.

9 **Q.** So if there was a gun and drugs, the gun and "drug" would
10 be seized and perhaps some money would be taken, at least in
11 those 13 incidents. And that's why you falsified the reports;
12 is that correct, sir?

13 **A.** I'm sorry. Just repeat that.

14 **Q.** That was a bad question. I apologize.

15 If -- in these 13 incidents where there's false reports
16 that you've admitted to, if there were a gun and you write
17 about a gun in the report, there actually was a gun found in
18 the car or the house; correct?

19 **A.** Correct.

20 **Q.** And if there was drugs in the report, there actually were
21 drugs found in the car or the house; correct, sir?

22 **A.** Correct.

23 **Q.** You did not place guns and/or drugs on citizens in
24 Baltimore City, did you, sir?

25 **A.** No.

1 Q. As a matter of fact, what you told the Government is often
2 when you, Mr. Rayam, did take some of their money, you would
3 cut the drug dealer a break and maybe not turn in all the drugs
4 or do something like that; is that fair to say?

5 A. That's fair to say. Just if I would take some of their
6 money or if I didn't lock them up, I would just -- they
7 wouldn't know, but I would take their money and the drugs; and
8 I would submit the drugs but not all of the money. So it would
9 just be partial, and I wouldn't arrest 'em.

10 Q. Excuse me. It's great to be mic'd up when you're sick. I
11 apologize.

12 All right. Let's just -- just briefly on overtime, you
13 indicated that you actually wrote out slips, overtime slips for
14 Detective, at that time, Hersl; is that correct?

15 A. Well, yes. Over the course of months, I can't say --
16 recall like what day; but over the course of a month, I pretty
17 much -- I know that I would have filled out slips for everyone
18 else.

19 Q. I'm not asking would have or could have. I'm asking --

20 A. Yes, I did, yes.

21 Q. You did; right?

22 A. Yes.

23 Q. And then I guess the fair question would be -- and I'm not
24 sure you can answer it -- when?

25 A. That's -- I can't recall the exact --

~~KAYLA CROSS~~

1 Q. Well, it had to be sometime between, I guess, Mr. Hersl
2 coming to the squad, which is in January of 2016, through the
3 arrest of March 1st, 2017; right?

4 A. You could -- you could say, yes, in between those times,
5 yes.

6 Q. Can you narrow it down at all?

7 A. I mean, it happened often, but not as often. But it's
8 just -- I can't really narrow it down. It was just -- just a
9 way of life. We all filled out slips for each other.

10 Q. Well, let me ask you this, then: Did the Government
11 try -- you met with the Government. I didn't get the details.
12 But you actually met with them -- when I say "the
13 Government" -- we've done this before -- Mr. Wise, Mr. Hines,
14 and Special Agent Jensen and TFO Sieracki in the back. You met
15 with them; my count, there was eight proffers. Sound about
16 right, eight meetings?

17 A. I never kept count of them. But the -- yeah, if that's
18 how many times they came to see me, then that's how many times
19 they came to see me.

20 Q. And when they came to see you, as we know,
21 Special Agent Jensen, she's the one who was taking -- trying to
22 take copious notes or notes when you're speaking; correct?

23 A. Okay. Yes.

24 Q. And these eight times, these are fairly lengthy meetings.
25 It's not like 10 minutes or 15 minutes. They sit down with you

~~KATAM~~ ~~CROSS~~

1 and they kind of milk the cow. They get as much as they can
2 from you; right?

3 **A.** I wouldn't say "milked the cow," but I just -- yeah, we --
4 I talked to them. We talked.

5 **Q.** Now, at any of those meetings -- and we saw the overtime
6 slips. How is your handwriting?

7 **A.** My handwriting is pretty legible. It's pretty neat.

8 **Q.** Distinctive? You'd recognize it?

9 **A.** Yes.

10 **Q.** Did they ever show you a slip, a Hersl slip with your
11 handwriting on it?

12 **A.** No.

13 **Q.** You guys did get guns off the street. I mean, you and
14 Gondo, you got -- you got guns off the street 2015, 2016?

15 **A.** Yes.

16 **Q.** And you did consider yourself a good police officer, at
17 least when you were doing the right thing; correct?

18 **A.** Yeah, I was -- yes, but --

19 **Q.** Can you give us an estimate of how many guns you got off
20 the street?

21 **A.** Estimate?

22 **Q.** Yeah.

23 **A.** Probably over a hundred, 150, maybe.

24 **Q.** Okay. And you knew that it was a common practice dating
25 all the way back to when you first came on the force about

~~KATAM~~ ~~CROSS~~

1 overtime and slash days and getting bonus time; correct?

2 **A.** Yes.

3 **Q.** And that's nothing new. That's been going on before you
4 became a cop; right?

5 **A.** Correct.

6 **Q.** You just kind of took advantage of it; right?

7 **A.** Yes.

8 **Q.** I'm going to talk in detail now about the Hamiltons,
9 July 8th, 2016.

10 Ronald Hamilton, this was -- this was your investigation;
11 correct?

12 **A.** Yes.

13 **Q.** And when you -- when I say it's your investigation, what
14 does that mean? Can you explain for the jury a little bit.

15 **A.** My investigation, meaning I was just the primary officer.
16 So it was up to me pretty much to come up with -- I was just
17 the lead detective, just to come up with the case and the
18 evidence and everything.

19 **Q.** And this Ronald Hamilton, he was -- he was a target that
20 you had; correct?

21 **A.** Yes.

22 **Q.** You had a source of information on this target; correct?

23 **A.** Yes.

24 **Q.** And this source of information was actually -- he was a
25 relative. He was a cousin of Ronald Hamilton; correct?

~~KAYLA~~ ~~CROSS~~

1 A. Yes.

2 Q. And -- I don't see why we can't say --

3 A. No. I just -- I didn't -- I thought it -- just because he
4 was an informant, I didn't think --

5 Q. There ain't no secrets anymore.

6 A. All right.

7 Q. All right. So he was really close to the Hamiltons;
8 correct?

9 A. Yes.

10 Q. And he not only gave you information about Mr. Hamilton;
11 he gave you information about Mr. Hamilton, Ronald Hamilton's
12 brother. That's Rajesh, R-A-J-E-S-H, Hamilton?

13 A. Yes.

14 Q. And when you get the Hamiltons' name, Ronald Hamilton, you
15 did take a look and you look at his rap sheet. And you knew at
16 that point that, as a good investigator would, that he had two
17 prior, at that point, federal narcotics convictions for
18 distribution of drugs; correct?

19 A. I did do a rap sheet. If that -- I can't really recall
20 the priors. But if that's what it was, then, yes, he had -- he
21 did have a prior of something, yes.

22 Q. And that's something you would do. You'd want to see
23 who -- here's your target. You got information. And you take
24 a look, and you see what he has; correct?

25 A. Yes.

~~KAYLA~~ ~~CROSS~~

1 Q. And when a person has not one but two, especially federal,
2 that kind of highlights him a little more; fair to say?

3 A. It doesn't matter if it's federal, state; but if he had a
4 record, it would -- that would -- pretty much means, you know,
5 it's possible that he's going --

6 Q. Let's take a second on that, just for a second. You know
7 in your experience that when you get a big drug bust in the
8 city, if it's a big drug bust, enough quantity, like
9 16 kilograms, it gets kicked up to the Federal Court; right?

10 A. Sometimes. I've been in State where it was a big drug
11 bust and the State kept it. So either way.

12 Q. So he was being targeted because of the informant, and he
13 was being targeted for also 'cause the informant told you that
14 he had guns as well; correct?

15 A. Correct.

16 Q. And then you learned that his home was -- at that point
17 you learned it was 1908 Ships Quarter Court or you found that
18 out, correct, in Westminster?

19 A. Yes. Yes.

20 Q. You even found out what kind of vehicle he drives;
21 correct?

22 A. Yes.

23 Q. And then what you did was you used GPS; right?

24 A. Yes.

25 Q. And you put the GPS on Mr. Hamilton's vehicle, the vehicle

~~KAWA~~ ~~CROSS~~

1 you identified; correct?

2 A. Correct.

3 Q. And GPS is legal if you have probable cause and a judge
4 signs, in essence, a warrant saying you could use it; correct?

5 A. Yes.

6 Q. But what you did here is you cut a corner right?

7 A. Yes.

8 Q. You placed the GPS on there, and you didn't have a court
9 authority to do that; correct?

10 A. Correct.

11 Q. And you know that's wrong, but you did it anyway?

12 A. Yes, I did it anyway.

13 Q. You didn't tell Gondo that you did that, did you?

14 A. Gondo knew.

15 Q. Gondo knew you did that?

16 A. Yes.

17 Q. Okay. But in addition to that, there was also actual
18 surveillance; correct?

19 A. Yes.

20 Q. Do you remember you did some surveillance; correct?

21 A. Yes.

22 Q. And in addition, John Clewell did some surveillance;
23 correct?

24 A. Yes.

25 Q. And you put all this in the warrant; right?

~~WATAM~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** And there was an actual warrant; is that correct?

3 **A.** Yes.

4 (Counsel conferred.)

5 **MR. PURPURA:** Can we approach the bench, then, Judge?

6 **THE COURT:** Sure.

7 (Bench conference on the record:

8 **MR. PURPURA:** I intend to put into evidence, if he --
9 once he identifies the actual affidavit and warrant for the
10 Westminster address.

11 **THE COURT:** Okay. May I see.

12 **MR. PURPURA:** (Handing.)

13 It sets out his basis for probable cause in detail.

14 **THE COURT:** While I'm looking, the Government's
15 objection?

16 **MR. WISE:** Your Honor, it's hearsay, and there's no
17 exception. We could have put it in, arguing that it was an
18 admission of a member of the conspiracy. They can't put it in.
19 There's no exception that applies.

20 It also raises this issue of this probable cause
21 defense that we've litigated. They can certainly ask him, as
22 they've done: What did you see? What did you do? What did
23 you talk about?

24 Mr. Hines asked him questions about whether he was
25 truthful in the warrant. But the warrant itself is

1 inadmissible, and there's no exception to the Hearsay Rule that
2 allows for its admission.

3 It's also full of hearsay within hearsay. It's full
4 of other people's observations. It's not evidence, frankly, of
5 anything, which is why the Hearsay Rule . . .

6 **THE COURT:** So why do you -- what's the hearsay
7 exception, and why do you need it in?

8 **MR. PURPURA:** I believe the hearsay exception is --
9 just a moment.

10 I believe -- I'm not sure of the exact number. I
11 think it's 801(d)(2)(D). And the exception would be that it's
12 a written report by a police officer -- I feel like I'm being
13 mic'd here -- but by a police officer using it against him, his
14 report.

15 **MR. WISE:** That specific rule says court documents can
16 be introduced except police officer reports, and so this
17 contains exactly what that exception says you can't move in
18 evidence. So you could put a judgment in; otherwise, we could
19 do that in every case.

20 **THE COURT:** Well, I'm going to have to look at that.
21 I don't know at this point you're saying 801(d) --

22 **MR. PURPURA:** I can take a look at the rules, but it
23 will take a minute. I just --

24 **THE COURT:** Okay. In the meantime, what do you want
25 to ask him out of this? I mean, what is the point of it?

1 **MR. PURPURA:** Well, I'm going to ask him a series of
2 questions. Maybe -- maybe I can just ask him the questions and
3 we'll see what happens.

4 **THE COURT:** Start with it for identification and ask
5 some questions, and we'll see what happens in the meantime.)

6 (Bench conference concluded.)

7 **BY MR. PURPURA:**

8 **Q.** Detective Rayam, I'm now going to show you what has been
9 marked for identification as Hersl Exhibit No. 7 and ask you to
10 please take a moment and take a look at that document, see if
11 you recognize that document (handing).

12 **A.** Was there something specifically you wanted me to look at?

13 **Q.** Do you recognize it?

14 **A.** Oh, yes, yes.

15 **Q.** And the document is -- in fact, it does contain your
16 statement of probable cause which you used to obtain a warrant
17 for the Westminster address; is that correct, sir?

18 **A.** Yes.

19 **Q.** That's the Hamilton house; is that correct, sir?

20 **A.** Yes.

21 **Q.** And that statement of probable cause was submitted to a
22 District Court judge here in Baltimore City; is that correct,
23 sir?

24 **A.** Yes.

25 **Q.** And it was submitted to a District Court judge because a

~~KATAM~~ ~~CROSS~~

1 District Court judge has statewide jurisdiction; is that
2 correct, sir?

3 **A.** Yes.

4 **Q.** And you knew that you wanted to execute this warrant
5 outside of Baltimore City because you're going to go to
6 Carroll County; correct?

7 **A.** Correct.

8 **Q.** If you went to a Circuit Court Judge in Baltimore City,
9 Circuit Court judges do not have statewide jurisdiction; and it
10 would be basically -- it may be an invalid warrant; right?

11 **A.** Correct.

12 **Q.** So you wanted to make sure that you had a valid warrant,
13 so you got a District Court judge to sign it; is that correct,
14 sir?

15 **A.** Yes.

16 **Q.** And then in addition to the actual warrant authorizing you
17 to search 1908 Ships Quarter Road in Westminster, Maryland,
18 here's your affidavit as well; is that correct?

19 **A.** Yes.

20 **Q.** And in the affidavit, in the first few paragraphs or pages
21 is your background; is that correct?

22 **A.** Yes.

23 **Q.** And there's nothing -- you're not lying about your
24 background as a police officer, are you, in that affidavit?

25 **A.** No.

~~KATAM~~ ~~CROSS~~

1 Q. And then on Page 6 there is -- one, two, three -- there's
2 four, four pages of what's called probable cause; right?

3 A. Yes.

4 Q. And in that probable cause, you're telling this
5 District Court judge that, in fact, Mr. Hamilton is involved in
6 large-scale drug trafficking; correct?

7 A. Yes.

8 Q. And you base that upon some surveillance which you
9 actually did; is that correct?

10 A. Yes.

11 Q. You base that upon your confidential informant, who was
12 actually a cousin of Mr. Hamilton; is that correct?

13 A. Yes.

14 Q. You base that upon some surveillance that John Clewell did
15 at the Fairmount Street addresses; is that correct?

16 A. Yes.

17 (Counsel conferred.)

18 **BY MR. PURPURA:**

19 Q. I'm now showing you what has been marked as
20 Defense Exhibit No. 8 for identification -- actually, 8 and 9.
21 Do you recognize these two houses on Fairmount Street, these
22 two row houses?

23 A. Yes. I believe that one of those houses where, you know,
24 the warrant -- another warrant was written for.

25 Q. Thank you.

~~KAYAW~~ ~~CROSS~~

1 And that would be the 2723, which is listed in your
2 affidavit; is that correct?

3 **A.** Yes.

4 **Q.** Thank you.

5 **MR. PURPURA:** I would move 8 into evidence and 9.

6 **THE COURT:** Any objection?

7 **MR. HINES:** No objection, Your Honor.

8 **THE COURT:** All right. That's Defendant Hersl 8
9 and 9.

10 **BY MR. PURPURA:**

11 **Q.** Showing you what has been entered into evidence as
12 Defense Hersl 8, this is 2723 Fairmount, and this would be
13 mentioned in your affidavit as one of the suspected storage
14 facilities for Mr. Hamilton's drugs; is that correct, sir?

15 **A.** Yes.

16 **Q.** And 9 is 2721, and that's another Hamilton-owned row
17 house, and that's right next door to 2723; is that correct?

18 **A.** It's right next door, yes.

19 **Q.** And is it usual or unusual for drug dealers to put houses
20 or cars or their property in someone else's name?

21 **A.** Yes.

22 **Q.** It's usual; right?

23 **A.** It's usual as well.

24 **Q.** And they want to do that because they want to hide their
25 assets; correct?

~~KATAM~~ ~~CROSS~~

1 A. Yes.

2 Q. So sometimes they use brothers or sisters or girlfriends;
3 right?

4 A. Yes.

5 Q. You actually went out to the Hamiltons' house, correct,
6 the Hamiltons' house in Westminster?

7 A. Yes.

8 Q. Did you ever do surveillance there before the actual raid
9 or before the search warrant?

10 A. I did, yes.

11 Q. So you know what the house looks like; right?

12 A. Yes.

13 Q. I'm going to show you what has been marked as Hersl 10 and
14 11 and ask you if you could identify 10 and 11.

15 A. Yes. That's their house.

16 Q. Is that the Hamilton house, both 10 and 11?

17 A. Yes.

18 Q. Thank you.

19 That's -- Defense Exhibit No. 11, that would be the --
20 kind of an aerial view of the Hamilton house, the house that
21 you all raided on July 8th of 2016; is that correct, sir?

22 A. Yes.

23 Q. And I believe you can -- it's a fairly large house;
24 correct?

25 A. Yes.

~~KAWA~~ ~~CROSS~~

1 Q. A lot of property surrounding the house; correct?

2 A. Yes, yes, land.

3 Q. Did it ever occur -- did you -- as a police officer, did
4 you think perhaps, how could someone who just gets out of
5 prison two years before acquire this type of property so
6 quickly?

7 A. Not -- I was told that he dabbled in a lot of real estate.
8 So, you know, I -- I wasn't sure.

9 Q. Okay. And as a detective on an elite squad as GTTF, you
10 had citywide jurisdiction; correct?

11 A. Citywide, yes.

12 Q. Okay. In addition, you were able to obtain statewide
13 lawful -- law authority; is that correct?

14 A. You said in addition we did or I did?

15 Q. You did.

16 A. I can?

17 Q. Yes.

18 A. Yes.

19 Q. And you did?

20 A. Wayne Jenkins did on our behalf, yes.

21 Q. Okay. And so when this -- when you stopped the
22 Hamiltons -- prior to the vehicle stop of the Hamiltons, you,
23 in fact, did have statewide law enforcement authority; and you
24 had expiration date on that of August 6th of 2016. Sound about
25 right to you?

~~KAYAW~~ ~~CROSS~~

1 A. Yes.

2 Q. And what does that give you, statewide law authority?

3 You're a Baltimore City cop. What does that give you?

4 A. If I can recall, we just had to put the county that we
5 were working in; and we were able to make car stops or do
6 investigations throughout -- you know, throughout that given
7 state -- well, area.

8 Q. Okay. It gave you greater flexibility because you were
9 kind of flex squad at that point; right?

10 A. Yes.

11 Q. And at this point, especially, you ran down the Hamiltons,
12 who has a house in Carroll County and, you know, I think
13 another house in Owings Mills, in Baltimore County as part of
14 this investigation; right?

15 A. Yes.

16 Q. So that's necessary in an investigation like this;
17 correct?

18 A. Yes.

19 Q. You can't just be tied to Baltimore City, and you weren't
20 just tied to Baltimore City, were you?

21 A. No.

22 Q. And your squad wasn't either, was it?

23 A. For this case, no.

24 Q. Now, did you ever discuss with Jenkins before you filed --
25 before the search warrant was filed that you had some

~~KATAM~~ ~~CROSS~~

1 misstatements in the search warrant?

2 **A.** No.

3 **Q.** Did you ever tell Gondo that, you know, the stuff on
4 surveillance I put in there is not accurate? Did you ever tell
5 him that?

6 **A.** No.

7 **Q.** You didn't tell anybody in your squad that, did you?

8 **A.** No.

9 **Q.** So no one knew except you; right?

10 **A.** Correct.

11 **Q.** Everyone thought what you had was a darned good warrant
12 signed by a District Court judge who has statewide
13 jurisdiction; right?

14 **A.** I believe so.

15 **Q.** On July 8th, 2016, you did do surveillance in the
16 Home Depot lot; is that correct?

17 **A.** Yes.

18 **Q.** Now, you indicated to the jury that you knew the vehicle
19 was there because you cheated a little bit. You had the GPS;
20 right?

21 **A.** Yes.

22 **Q.** But after you did cheat, you went there and you actually
23 did eyeball surveillance. That means you were right there;
24 right?

25 **A.** Yes.

~~KATAM~~ ~~CROSS~~

1 Q. And you were in the car with Gondo; correct?

2 A. Yes.

3 Q. You called for backup; right?

4 A. Yes. They -- I know Clewell and Hersl was somewhere in
5 the area, but --

6 Q. But how did they get there?

7 A. Yeah, we called for backup. They were around.

8 Q. Who called?

9 A. It could have been myself.

10 Q. Your investigation, you wanted more than two people --

11 A. I could have called. I could have called them.

12 Q. Okay. Fair enough.

13 And you called John Clewell; remember that?

14 A. If -- I -- they were contacted, yes, okay, if -- I
15 don't -- I know they were contacted.

16 Q. Do you know, just on July 6th or July 5th or July 4th, did
17 you know where Hersl was during those days? He wasn't with the
18 squad. Do you know where he was?

19 A. No, I don't --

20 Q. Did he talk about going on vacation with you just before
21 this incident, the Hamiltons?

22 A. Did Hersl talk about going on vacation with me?

23 Q. Not with you; that he was away on vacation.

24 A. Oh. Yeah; I can't remember. That was -- I don't remember
25 if he was going on vacation back then or not.

~~KATAM~~ ~~CROSS~~

1 Q. And you don't know if he just got back from vacation when
2 he was called in to do the surveillance, do you?

3 A. You know, I can't remember those specifics.

4 Q. So bottom line is you're doing surveillance, Home Depot,
5 the Hamiltons, Ronald and Nancy; you leave Home Depot, and you
6 pull the car over; correct?

7 A. Yes.

8 Q. Who pulls the car over?

9 A. I believe -- well, I was in the car. I believe Gondo was
10 the driver. So he -- we -- I pulled the car over, but Gondo
11 was the driver.

12 Q. Okay.

13 A. Yeah.

14 Q. And then, of course, that Hersl and Clewell were in their
15 car as well; correct?

16 A. Yes.

17 Q. And they were following directions, and they were part of
18 the stop as well; correct?

19 A. Yes.

20 Q. And at this point you had a warrant to search the house
21 and I think the vehicle; is that correct?

22 A. Yes.

23 Q. And you thought you had your target. You knew who he was,
24 Ronald Hamilton; correct?

25 A. Yes.

~~KAYAW~~ ~~CROSS~~

1 Q. You handcuffed Mr. Hamilton right?

2 A. Yes.

3 Q. You also put in the affidavit you thought Nancy Hamilton
4 was involved in drug trafficking with her husband; isn't that
5 correct?

6 A. Yes, as far as the cash, I think it was, yes.

7 Q. Okay. So you handcuffed her as well; is that correct?

8 A. Yes.

9 Q. You thought you had lawful authority to do that; isn't
10 that correct?

11 A. Yes.

12 Q. You took them back to a Baltimore City substation;
13 correct?

14 A. Yes.

15 Q. It's called the barn; right?

16 A. Yes.

17 Q. Again, you think you can do that. You think that you're
18 doing exactly what you should be doing. You've got a lawful
19 warrant. You've got statewide jurisdiction. You've stopped
20 the Hamiltons, who were suspected drug traffickers. And you're
21 bringing them back to the barn to question them; right?

22 A. Yes.

23 Q. And Jenkins, Sergeant Jenkins, said he wants to question
24 them; correct?

25 A. Yes.

1 Q. And he wants to pose as either an Assistant United States
2 Attorney -- God knows why he wanted to do that -- or he was
3 going to be a federal agent; right?

4 A. Yes.

5 Q. And he wanted to do that because he wanted to intimidate
6 the Hamiltons. That's just to play 'em; right?

7 A. Yes.

8 Q. There's nothing wrong with playing someone like that, is
9 there?

10 A. I don't know. But as far as him posing as a
11 U.S. Attorney, I don't know if you can do that or not, but --

12 Q. Maybe sketchy; right?

13 A. Yes.

14 Q. But the bottom line, that was Jenkins' style; correct?

15 A. Yes.

16 Q. And that was what Jenkins was going to do; right?

17 A. Yes.

18 Q. Because Jenkins wanted to see if they had any other
19 sources, if they had drugs. He wanted to admit what they were
20 doing; correct?

21 A. Yes.

22 Q. In that room -- 'cause it was a room you put Mr. Hamilton
23 in; right?

24 A. Yes.

25 Q. Okay. And Mrs. Hamilton was in the car with John Clewell,

~~KAYAW~~ ~~CROSS~~

1 right, to your knowledge?

2 **A.** I remember her coming in 'cause she had to use the
3 restroom or something like that, but -- so yes.

4 **Q.** So she was free to use the restroom which she did;
5 correct?

6 **A.** Yes.

7 **Q.** And then Hersl -- well, actually, the people that
8 interviewed Mr. Hamilton was Gondo and Jenkins; right?

9 **A.** I did say that. I know I was around as well.

10 **Q.** Okay. And you were there as well; correct?

11 **A.** Yes. Yes.

12 **Q.** And Hersl was not part of that interview, was he, sir?

13 **A.** Yeah. I just testified that I knew he was just back --
14 people back and forth and everything; but directly, no. It was
15 Wayne who was conducting it.

16 **Q.** Now, what Mr. Hamilton said was that he had \$40,000 at his
17 house and nothing else; correct?

18 **A.** Correct.

19 **Q.** Now, normally I think good police work is you don't just
20 take what you believe is a drug trafficker's word for that, do
21 you?

22 **A.** No.

23 **Q.** And you have a warrant, so you're going to execute that
24 warrant; correct?

25 **A.** Correct.

~~KAYAW~~ ~~CROSS~~

1 Q. And that's good police work to follow up; correct?

2 A. Correct.

3 Q. And that you and Gondo put Mr. and Mrs. Hamilton in the
4 back of a police vehicle, and you drove 'em to their home; is
5 that correct?

6 A. Yes.

7 Q. And that, as you testified to, Jenkins and Hersl followed
8 in -- I believe it was the Hamiltons' vehicle; correct?

9 A. Yes.

10 Q. So the point being, at least in your mind, would be that
11 if you found drugs, if you found guns, the target of the
12 investigation, in that house and they were arrested, they'd be
13 in Carroll County and they'd be arrested right there; is that
14 correct?

15 A. Yes.

16 Q. If you didn't find anything, then they're home and they've
17 got their car and they get released; correct?

18 A. Yes.

19 Q. But you were hoping to find something; correct?

20 A. Yes.

21 Q. And when I say "something," you were looking for guns,
22 drugs, and large amounts of money; is that fair to say?

23 A. Yes.

24 Q. Now, before you went out there, before you went out to the
25 Hamiltons' house, before you went out to this house here, you

1 didn't have a little side meeting with Danny Hersl (indicating)
2 and say, "Danny, we're going to go out to the Hamiltons' house,
3 and we're going to play it like, whatever we get there, we're
4 going to split four ways"? You didn't say that to him, did
5 you, sir?

6 **A.** I didn't have direct contact -- I mean conversation like
7 that, no.

8 **Q.** You didn't have a -- you didn't even have that
9 conversation with Jenkins either before you went out there, did
10 you, sir?

11 **A.** We had a conversation because that's why we sent Clewell
12 with the other squad to do the search warrant because --

13 **Q.** Fair enough.

14 **A.** -- we wanted to be around people that --

15 **Q.** So you did have a conversation with Jenkins; correct?

16 **A.** Yes.

17 **Q.** But not with Danny Hersl (indicating); correct?

18 **A.** Well, like I said, it was understandable already at the
19 time that I didn't have a direct conversation with --

20 **Q.** Sir, I'm not asking for your conversation.

21 **A.** Okay. I get --

22 **Q.** I'm asking if you said something to Danny. "Danny, you're
23 part of this. We're going to go get a lot of money." You
24 never said that to him, did you, sir?

25 **A.** No, no.

~~KAYAW CROSS~~

1 Q. Now, who sat with both Nancy -- who sat with both Nancy
2 and Ronald Hamilton?

3 A. All right. So in the beginning -- initially, it was
4 myself, Hersl, and Gondo that went upstairs. And towards the
5 end, Hersl sat with Mr. and Mrs. Hamilton.

6 Q. Okay. And is it proper to have Mr. and Mrs. Hamilton
7 seated in one area during the search?

8 A. Yes.

9 Q. That's proper police protocol; correct?

10 A. Yes.

11 Q. You didn't want them wandering around the house during
12 that time, do you?

13 A. No.

14 Q. As a matter of fact, when you all were driving up to the
15 house, you in particular, I think Mrs. Hamilton suggested that,
16 you know, I've got young children in the house. I'd like to
17 get them out of the house.

18 And you allowed them to make a phone call; is that
19 correct?

20 A. Yes.

21 Q. And they did and they were taken out of the house; right?

22 A. Yes.

23 Q. Now, when you went upstairs and you saw the money, what
24 turns out to be \$50,000 in a heat-sealed envelope, you knew you
25 had something at that point; right?

~~KAYAW~~ ~~CROSS~~

1 A. Yes.

2 Q. That's indicative of a drug trafficker; correct?

3 A. That's what I believed, yes.

4 Q. Okay. And then there's an additional \$20,000 in
5 hundred-dollar bills which were loose, not heat-sealed; is that
6 correct?

7 A. Yes.

8 Q. And at first you were not -- you were not going to take
9 that money; is that correct?

10 A. Correct.

11 Q. As a matter of fact, you and Gondo were not going to take
12 that money; is that correct?

13 A. Well, I could speak for myself. We -- you know, I saw him
14 put it back, and I wasn't going to take it initially, no.

15 Q. And you weren't going to take it for a couple reasons.
16 Number one, you were out in another jurisdiction in
17 Carroll County, and you were somewhat nervous about that;
18 right?

19 A. Yes.

20 Q. But Jenkins, when you told him, "There's money up there,"
21 he told you to go take it; right?

22 A. Yeah. I approached him and said, "What do you want to
23 do?"

24 He said, "Yeah, take it," and I took it.

25 Q. So even at the point when you're in there and you get the

1 \$20,000, in your mind, you're still not going to take it.
2 You're not going to steal it at that point. For whatever
3 reason, you're still not going to do it; right?

4 **A.** No, I'm not.

5 **Q.** And it wasn't until Jenkins said, "Go take it," that you
6 took it; right?

7 **A.** Yes, that's when I took it.

8 **Q.** And you took it. And as you testified before, you took it
9 from the bedroom and you brought it downstairs and you put it
10 in the police vehicle; is that correct, sir?

11 **A.** Yes.

12 **Q.** And then after that, Ms. Hamilton approached you; correct?

13 **A.** I know during the time we talked, yes.

14 **Q.** Okay. And you actually -- you went downstairs with
15 Mrs. Hamilton; right?

16 **A.** No. I was never alone with her, though.

17 **Q.** I'm not saying you were alone with her.

18 **A.** All right.

19 **Q.** You and Jenkins went downstairs with Ms. Hamilton?

20 **A.** At one point she was downstairs, yes. Yes, she was
21 downstairs. I remember her being downstairs, yes.

22 **Q.** And you went down there?

23 **A.** Yes.

24 **Q.** Okay. And when you were down there, she told you, right
25 to you, that she was actually a confidential informant working

~~KAYAN~~ ~~CROSS~~

1 for someone in the Southwest District; right?

2 **A.** Yes.

3 **Q.** What's a confidential informant?

4 **A.** An informant, just someone who gives information to the
5 police.

6 **Q.** And she wanted to take you away from her husband when she
7 told you that; right?

8 **A.** Yeah, she did, yes.

9 **Q.** And she actually wrote her number on a piece of paper and
10 gave it to you, didn't she?

11 **A.** Yes.

12 **Q.** Now, a physical description, if you can, back in July of
13 2016 between Jenkins and Hersl. If one was to be described as
14 a stocky, white male and the other described as a scruffy,
15 beard, older, perhaps with the smell of alcohol on him, which
16 would be which?

17 **A.** I would believe that stocky would be Wayne. And the
18 older, scruffy, it would be Hersl.

19 **Q.** Thank you.

20 I'm going to take you next to August 8th of 2016. This is
21 the Dennis Armstrong incident.

22 Now, were you involved in a chase August 8th, 2016?

23 **A.** No.

24 **Q.** Okay. Did you see that -- did you see Jenkins and Clewell
25 and Hersl in the vehicle before they started after

~~KAYAW~~ ~~CROSS~~

1 Mr. Armstrong?

2 A. Before --

3 Q. Before.

4 A. -- the chase?

5 Q. Yes, before the chase.

6 A. We were following them initially, but somehow they got
7 ahead of us and a chase happened, but I wasn't -- no, we
8 weren't there. Myself and Gondo wasn't there.

9 Q. Okay. Let's take a step back.

10 You're in a car with Gondo; right?

11 A. I believe it was just me and Gondo, yes.

12 Q. Okay. And you say you're following Jenkins' car at that
13 point?

14 A. Yes.

15 Q. Where were you going?

16 A. We were just driving around, what Wayne does, looking for
17 vehicles to stop.

18 Q. So you're doing -- you're citywide and you're being
19 Wayne's type of proactive at this point; right?

20 A. Yes.

21 Q. And Wayne apparently got ahead of you guys, a little heavy
22 on the gas pedal; right?

23 A. Yes.

24 Q. And you didn't see the pullover of Mr. Armstrong? You
25 didn't see the chase of Mr. Armstrong?

~~KATAM~~ ~~CROSS~~

1 A. No.

2 Q. Did you see the cocaine on the street which was thrown out
3 from Mr. Armstrong's car?

4 A. No.

5 Q. So what you knew of the incident is that after
6 Mr. Armstrong's arrested, he's brought back to the storage
7 locker area where he came out of; correct?

8 A. Yes. Yes.

9 Q. And at that point what you see is you see at that time
10 Detective Hersl in the Armstrong vehicle; correct?

11 A. I don't -- can't really recall if he was in there, but he
12 could have -- I'm assuming that him, Clewell, and --

13 Q. Jenkins?

14 A. -- Jenkins searched the vehicle.

15 Q. Okay. Well, don't assume. I'm just asking what you saw.
16 Did you see Mr. Armstrong?

17 A. You know, I want to be helpful. He could have -- I think
18 he was brought back there and just taken in the wagon and taken
19 somewhere else.

20 Q. Okay. So Mr. Armstrong was taken in a Baltimore
21 City Police wagon --

22 A. Yes.

23 Q. -- 'cause he had been arrested; correct?

24 A. Yes.

25 Q. And why would a wagon pick somebody up?

~~KAYAW~~ ~~CROSS~~

1 A. Oh, because they're being arrested.

2 Q. Okay. So he was arrested. So Armstrong's in the wagon,
3 and he's driven away; correct?

4 A. Yes.

5 Q. And at this point he's either going to the district or to
6 Central Booking center; correct?

7 A. Yes.

8 Q. Because you know they've told you they found drugs,
9 et cetera, in the car; correct?

10 A. Correct, yes.

11 Q. And then what happens is that Jenkins wants a warrant for
12 a storage locker; right?

13 A. Yes.

14 Q. And John Clewell, who apparently is the best warrant
15 writer, is being sent back downtown to write the warrant;
16 right?

17 A. Yes.

18 Q. And Detective Gondo goes with him; correct?

19 A. Yes.

20 Q. That leaves on the scene, the Armstrong scene, would be
21 yourself, Hersl, and Jenkins; right?

22 A. Yes.

23 Q. Hersl, according to your testimony, says, "Let's go for a
24 ride to the 7-Eleven"; correct?

25 A. Yes.

~~KATAM~~ ~~CROSS~~

1 Q. You go to Archbishop Curley parking lot?

2 A. Yes.

3 Q. And there's a bag in the car?

4 A. Yes.

5 Q. What kind of bag?

6 A. Just a bag with money in it, just like a -- it wasn't like
7 a grocery bag, but like a -- just a plastic bag, though.

8 Q. And when money is seized, when -- let's say in a chase
9 such as this and you seize money, you're supposed to take the
10 money; you're supposed to take the drugs and seize them and
11 turn them into ECU; correct?

12 A. Yes.

13 Q. Evidence Control Unit; correct?

14 A. Yes.

15 Q. At this point the -- Mr. Armstrong's already been -- he's
16 already gone. He's been arrested; right?

17 A. Yes.

18 Q. So the money that's supposed to go from the bag to
19 Evidence Control Unit is sitting in the car; right?

20 A. It was brought to the car; but, yeah, it was sitting in
21 the car once we was at Archbishop, yes.

22 Q. Okay. And at that point Dan Hersl (indicating) says,
23 "Take 500. I'll take 500." Right?

24 A. Yes.

25 Q. And that's what you took, was 500?

~~KATAM~~ ~~CROSS~~

1 A. Yes.

2 Q. And apparently that's what he took as well; correct?

3 A. Yes.

4 Q. Money was still in the bag, some money?

5 A. Yes.

6 Q. Money was brought back, and eventually some money was
7 turned in to ECU directly; is that correct?

8 A. Yes.

9 Q. There's no question that you stole \$500; right?

10 A. No question. Yes.

11 Q. There's no question that Dan Hersl stole \$500 at that
12 point either, is there?

13 A. No, no question.

14 Q. Now, before you went out on August 8th, 2016, just before
15 this incident, did Dan come up to you and say, "The first
16 person we get or the first person we see, I'm going to pull
17 them over; we're going to find money, and we're going to share
18 it"?

19 A. No.

20 Q. Sir, I'm going to direct your attention to February 2016,
21 the arrest of a Paul Edwards at 1110 McKean,
22 M-c-K-E-A-N, Avenue. I know you've been involved in a lot. Do
23 you remember this --

24 A. I'm sorry.

25 Q. That's okay.

~~KARAW~~ ~~CROSS~~

1 A. I remember the name.

2 Q. All right. This is one, if it helps a little bit, once
3 you go into the residence, you see Mr. Edwards upstairs
4 counting money.

5 Do you remember that?

6 A. Okay. Yes.

7 Q. Okay. And involved in that search or that arrest was
8 yourself, Gondo, Clewell, and Hersl; right?

9 A. Yes.

10 Q. And Sergeant Allers, he was a sergeant at that time?

11 A. Yes.

12 Q. And you seized money -- there was a fairly large amount of
13 money; right?

14 A. Yes.

15 Q. And you kept somewhere between 5 to 7 thousand dollars of
16 that money; correct?

17 A. Kept it as far as individually or --

18 Q. Well, let's start with the first part.

19 A. Okay.

20 Q. You seized it and you kept it to begin with; right?

21 A. Yes.

22 Q. And then you split that money with Allers and Gondo;
23 right?

24 A. Yes.

25 Q. You didn't -- back in February of 2016, you didn't give

~~KATAM~~ ~~CROSS~~

1 any money to John Clewell, did you?

2 **A.** No.

3 **Q.** And you didn't give any money to Hersl (indicating), did
4 you?

5 **A.** No.

6 **Q.** And you didn't give the money to Gondo or Allers in front
7 of Hersl (indicating) or Clewell, did you?

8 **A.** No.

9 **Q.** You did that in secret; right?

10 **A.** Yes.

11 **Q.** 'Cause you wanted to keep that away from them, both
12 Clewell and Hersl at that time; is that correct, sir?

13 **A.** Yes.

14 **Q.** As a matter of fact, Allers said, "Hersl's not part of it.
15 I don't trust Hersl."

16 Do you remember saying that?

17 **A.** Yes, he said that to me before.

18 **Q.** And that's what you told the Government at the proffer
19 sessions as well; correct?

20 **A.** Correct.

21 **Q.** Now I'm going to take you later in time. June 26th, 2017,
22 there's a search of a dwelling which is parallel -- that's up
23 and down -- parallel to North Avenue. If it helps you a little
24 bit, there's a safe located there. And you get access to the
25 safe by either a key or the combination?

~~KAYAN~~ ~~CROSS~~

1 A. Yes.

2 Q. Do you remember that?

3 A. Yes.

4 Q. And there's money in that safe; right?

5 A. Yes.

6 Q. And part of the people that are there on July 26th, 2017,
7 part of the squad would be yourself, Gondo, Hersl, and Allers;
8 right?

9 A. Yes.

10 THE COURT: I'm sorry. Is it June or July 26th?

11 MR. PURPURA: I'm sorry. June 26th, 2017.

12 THE COURT: June, okay.

13 MR. PURPURA: I might have said "July," though.

14 BY MR. PURPURA:

15 Q. And when you got in -- you actually got -- you got
16 consent, I believe, to enter the safe; is that correct? Do you
17 remember that?

18 A. Well, we had a search warrant, so -- and on the
19 attachment, it was "safes." So, yeah, he gave us the password
20 or key, whichever one, to get in.

21 Q. And you took about -- you didn't know how much it was, but
22 you described it 3 to 4 inches (indicating) of stacks of money.
23 You took it and you put it in your vest (indicating); right?

24 A. Yes.

25 Q. And you did that -- you didn't want -- you didn't want

~~KATAM~~ ~~CROSS~~

1 Hersl to see you do it when you did it, did you?

2 **A.** No.

3 **Q.** And then when you took that money, you split that money;
4 correct?

5 **A.** Yes.

6 **Q.** And you split that money with Sergeant Allers, Gondo, and
7 yourself; correct?

8 **A.** Yes.

9 **Q.** This is June 26th, 2017; right?

10 **A.** Okay. Yes.

11 **Q.** Not Hersl (indicating)?

12 **THE COURT:** Wait a minute. 2016?

13 **MR. PURPURA:** '16.

14 **THE COURT:** '16.

15 **MR. PURPURA:** Judge, you're catching every time I say
16 something wrong. You're right. 2016.

17 **BY MR. PURPURA:**

18 **Q.** And Hersl was not there when you split the money, was he?

19 **A.** No.

20 **Q.** And, again, Allers -- Allers said he didn't trust Hersl
21 and not to give him any of the money; right?

22 **A.** Allers only said that one time.

23 **Q.** Okay. And when he told you not to give Hersl any money,
24 he said it once; you never asked him again after that.

25 Correct?

~~RAYAM~~ ~~CROSS~~

1 **A.** Correct.

2 **Q.** And you knew that when Hersl first came to the squad --
3 which would be sometime in January of 2016 -- that Hersl went
4 in and spoke to Sergeant Allers. And he told Sergeant Allers
5 that, you know, Sarge, I think that maybe Gondo and Rayam are a
6 little sketchy. I'm a little worried. Allers ever tell you
7 about that meeting?

8 **A.** No. Allers told me about Hersl, that he had, like,
9 20-some complaints.

10 **Q.** Hold on a second.

11 **THE COURT:** Stop. Stop.

12 **MR. PURPURA:** Thank you.

13 **THE COURT:** Stop. Stop. Thank you.

14 **BY MR. PURPURA:**

15 **Q.** So you wanted to volunteer that, but you don't remember
16 Allers --

17 **THE COURT:** No.

18 **BY MR. PURPURA:**

19 **Q.** You don't remember Allers saying --

20 **THE COURT:** Take out the first part of the question.
21 Just repeat the question, Mr. Purpura.

22 **MR. PURPURA:** I am.

23 **THE COURT:** Oh, okay. Then I didn't -- sorry. I
24 missed your beginning. Go ahead. Do it again.

25 **BY MR. PURPURA:**

1 Q. You don't remember Sergeant Allers telling you and Gondo,
2 "Watch out for Hersl"?

3 A. No. You --

4 Q. This is "yes" or "no" now on this.

5 A. Say it -- okay. Do -- watch out for Hersl?

6 Q. Watch out -- "I don't trust Hersl"?

7 A. Yeah. I told you he said that one time, yes. He did say
8 that, yes.

9 Q. Okay. Now, Hersl spoke to you all about gaining consent,
10 consent in searches. You either have written consent, you have
11 oral consent, or you can actually video-consent to the search;
12 correct?

13 A. Okay. Correct.

14 Q. Okay. And you told the Government on June 26th, 2017,
15 that it was Hersl's idea to document consents via phone video.

16 Do you remember that?

17 A. Oh, yes, yes.

18 Q. And that made Allers nervous too. Do you remember telling
19 him that?

20 A. Yes.

21 Q. Because here you'd -- was worried that Hersl was really
22 doing real police work and documenting consent; right?

23 A. No. I believed that Allers just didn't know that you
24 could do that. I never heard of it either until Hersl came.

25 Q. You were concerned in the end of May, May -- exactly,

1 May 27th of 2016, there was a phone call between yourself and
2 Gondo, and the call in general was that Danny Boy just came
3 back down to IAD, which is Internal Investigation.

4 Do you remember that?

5 **A.** Okay, yes.

6 **Q.** And then in -- I think I said -- yes, May, on May 27th,
7 2016, in this phone call, either you or Gondo were concerned at
8 that point that Hersl may be an informant, yo.

9 Do you remember that?

10 **A.** Yes.

11 **Q.** And by "informant" would be someone who would, you know,
12 tell on you or Gondo or Allers for violating, stealing, doing
13 whatever you're doing; correct?

14 **A.** Yes.

15 **Q.** And that phone call was recorded, and the Government had
16 that phone call; right?

17 **A.** Yes, I guess they -- they had it.

18 **Q.** You admitted to the Government that you actually sold
19 drugs as well; correct?

20 **A.** Yes.

21 **Q.** There was a time in August of 2016 when you were
22 approached by -- when Jenkins approached both you and Rayam.
23 He had a hundred gelcaps and a hundred grams of raw heroin.

24 Do you remember that time?

25 **A.** I don't know if those were the exact numbers, but I know

1 he approached me as far as asking if I wanted to sell some
2 drugs for him.

3 Q. How many times did he approach you to do that?

4 A. A couple -- you know, several times.

5 Q. So many times you can't remember any individual time?

6 A. Well, I say I didn't recall the exact amount. You said a
7 hundred gelcaps, a hundred grams. I'm saying I don't recall
8 him -- those numbers, but I recall him approaching me.

9 Q. Do you recall that you called your cousin in Jersey?

10 A. Yes.

11 Q. And you asked him to help split --

12 A. To help, yes.

13 Q. -- to help sell the drugs?

14 A. Yes.

15 Q. And he did help you sell the drugs?

16 A. Yes. He -- he contacted someone, yes.

17 Q. And as a result of that, you got some money; correct?

18 A. Yes.

19 Q. And you gave the money -- it was a split between yourself,
20 Jenkins, and Gondo; right?

21 A. No; just me and Jenkins.

22 Q. Just you and Jenkins?

23 A. Yes.

24 Q. Not Hersl either?

25 A. No.

1 Q. There was a time -- now we're near probably, I believe,
2 near the end of your tour of duty with the GTTF where there's a
3 car stop. You were present. Jenkins was present. Hersl was
4 present. Ward was present, Taylor and Hendrix. This is the
5 car stop with the 1.5 pounds of marijuana; do you remember that
6 one?

7 A. Okay. Yes.

8 Q. And this is the car stop where you all went into a house
9 at a dead-end. Jenkins got the consent to search the house?

10 A. Yes.

11 Q. Do you remember that?

12 You find 1.5 pounds of marijuana and a gun?

13 A. Yes.

14 Q. You actually wanted to submit -- as you told the
15 Government --

16 A. Yes.

17 Q. -- you wanted to submit the drugs and guns; correct?

18 A. I figured we should get a search warrant and -- yeah, and
19 submit it, yes.

20 Q. So you wanted to do it the right way; right?

21 A. Yes.

22 Q. Okay. But Jenkins said, "No." He was pressuring you
23 'cause you owed him money; correct?

24 A. Yes.

25 Q. He came down on you fairly hard; right?

~~RAYAM~~ ~~CROSS~~

1 A. You could say, yes.

2 Q. You caved to his pressure; correct?

3 A. Yes.

4 Q. And I think you even described to the Government he was
5 like a prince in the department; is that right?

6 A. I said that, yes.

7 Q. So then you took the gun and you took the pound and a half
8 of marijuana; you contacted your friend Gondo, right --

9 A. Yes.

10 Q. -- got him involved?

11 A. Yes.

12 Q. Gondo helped or aided in the sell -- sale of the gun on
13 the streets and the marijuana; correct?

14 A. Yes.

15 Q. And then you gave some of the money at that point to Gondo
16 for his help; right?

17 A. Yes.

18 Q. You gave some of the money to Jenkins 'cause you owed him?

19 A. Yes.

20 Q. You didn't give any money to Hersl; right?

21 A. No.

22 Q. Despite the fact that Hersl was there at that search;
23 correct?

24 A. Yes, correct.

25 Q. Your first robbery, robbery, June 27th, 2014. This is the

~~RAYAM~~ ~~CROSS~~

1 bird food store.

2 Do you remember that?

3 **A.** Yes.

4 **Q.** You had a legitimate reason, apparently, to enter this
5 bird food store as part of police work; right?

6 **A.** Yes.

7 **Q.** And when you're in there, you saw a lot of money; right?

8 **A.** Yes, yes, I saw.

9 **Q.** And as a result of that, you got greedy. You wanted some
10 of that money; fair?

11 **A.** Yes.

12 **Q.** And as a result of that, you didn't get a warrant to do a
13 police-type search or anything like that, did you?

14 **A.** No.

15 **Q.** What you did is you contacted two friends; correct?

16 **A.** Yes.

17 **Q.** Gentleman by the name of Finnegan; correct?

18 **A.** Yes.

19 **Q.** And your cousin?

20 **A.** Yes.

21 **Q.** And you got them and you gave them some police
22 identification; correct?

23 **A.** Yes.

24 **Q.** You drove them to this store; right?

25 **A.** Yes.

~~RAYAM~~ ~~CROSS~~

1 Q. They went in there, acting as police officers with the
2 force of the police to rob these people; right?

3 A. Yes.

4 Q. And they did rob the people; right?

5 A. Yes.

6 Q. And you took a part of those proceeds in 2014; correct?

7 A. Yes, I did.

8 Q. And this was robbery at that point done at force or threat
9 of force when y'all went in there -- when they went in there
10 acting as police officers to take their money; right?

11 A. Yes.

12 Q. And as Mr. Hines brought out, because you're in a bind
13 right now -- you are in a bind; right?

14 A. I don't understand like a bind.

15 Q. A bind, you're facing a fairly harsh sentence of 20 years.
16 You're trying to help yourself out; right?

17 A. Well, it's never too late to do the right thing. That's
18 what I'm doing.

19 Q. And so the right thing is you're going to testify on your
20 cousin in that case as well; right?

21 A. Correct.

22 Q. Your second robbery was Marnat Avenue, October 5th, 2015.
23 Gondo, he had a drug dealer friend; right?

24 A. Yes.

25 Q. Glen Wells; correct?

~~RAYAM~~ ~~CROSS~~

1 A. Yes -- no, I don't know if his name is Glen Wells.

2 Q. Kyle Wells?

3 A. But Kyle, yes.

4 Q. It's Kyle Glen Wells.

5 A. Okay.

6 Q. Grew up with him; right?

7 A. Yes.

8 Q. He, Kyle Wells, received information that a man by the
9 name of Anderson had a lot of money and a lot of drugs and
10 perhaps a gun in his house; correct?

11 A. Well, initially it was just a lot of money.

12 Q. A lot of money?

13 A. Yes.

14 Q. And you all -- meaning you all, meaning Gondo, Wells, and
15 you -- wanted to take that money; right?

16 A. Yes.

17 Q. And what you wanted to do initially back in October of
18 2015, you didn't want anyone to be home; right?

19 A. Yes.

20 Q. So what you did, you put an illegal GPS under that car;
21 right?

22 A. Yes.

23 Q. And you tracked that car; right?

24 A. Yes.

25 Q. The point being you wanted Mr. Anderson to be far away

1 from that apartment; right?

2 **A.** Yes.

3 **Q.** 'Cause you wanted an empty apartment when you went in
4 there; correct?

5 **A.** Yes.

6 **Q.** Because what you wanted to do -- and, you're a cop.
7 That's a burglary; right? You wanted to break into someone's
8 house at night with the intent to steal. That's what you
9 wanted to do; right?

10 **A.** Yes.

11 **Q.** You didn't want to physically confront someone and
12 overpower them through fear and take their money, did you?

13 **A.** No.

14 **Q.** So when that GPS recorded that car way over here, far away
15 from the Anderson house, at that point you thought it was good
16 to go in; right?

17 **A.** Yes.

18 **Q.** So you and Wells went up to the house; correct?

19 **A.** Yes.

20 **Q.** But even then, you wanted to take another precaution
21 because you didn't want to do a robbery; you wanted to do a
22 burglary. You didn't want to take something away by force or
23 threat of force with a gun. So what you did was you
24 (knocking) -- you knocked on the door real loud; right?

25 **A.** Yes.

1 Q. 'Cause you wanted to make sure no one's home; right?

2 A. Yes.

3 Q. Because if someone answered the door, you might have said,
4 "Well, sorry. Wrong person." Right? That's something
5 different; correct?

6 A. Correct.

7 Q. But what happened is that when you got inside,
8 lo and behold, in the bedroom was either Ms. Anderson or --
9 Anderson or Mr. Anderson's paramour, but there was a woman in
10 the bedroom; right?

11 A. Yes.

12 Q. Last thing you wanted to see in the house was anybody, in
13 particular a woman; right?

14 A. Yes.

15 Q. You had your gun?

16 A. Yes.

17 Q. You pointed your gun at her?

18 A. Yes.

19 Q. And you said, I'm just going to quote -- because you
20 already testified to this once before; right?

21 A. Yes. Yes.

22 Q. "Just don't move." You could have even said, "I'ma kill
23 you, and where's the money?" Right?

24 A. I said a lot of things that night. That's what I just --

25 Q. And you had the gun pointed at her (indicating); right?

~~RAYAN~~ ~~CROSS~~

1 A. Yes. Yes.

2 Q. And that's a robbery; right? No questions about it?

3 A. Yes.

4 Q. It's --

5 A. Yes.

6 Q. She was scared, wasn't she?

7 A. Yes.

8 Q. And as soon as --

9 A. I think so.

10 Q. -- you said that, she told you -- and she pointed to the
11 "chester" drawers, just like that; right?

12 A. Yes.

13 Q. She pointed to them; right?

14 A. Yes.

15 Q. You had your hoodie pulled up. You tried to disguise
16 yourself; correct?

17 A. Yes.

18 Q. And then you took the jewelry, and you took the money and
19 you took drugs; correct?

20 A. Yes.

21 Q. Approximately \$12,000, Rolex watch. You said 800 grams of
22 heroin?

23 A. Yes.

24 Q. And you left?

25 A. Yes.

1 **THE COURT:** Mr. Purpura, let me know when you're at a
2 good breaking point. That clock is actually a little slow.

3 **MR. PURPURA:** Perfect.

4 **THE COURT:** Okay. All right. Ladies and gentlemen,
5 we're going to take the lunch recess. We'll be resuming at
6 2 o'clock. See you then.

7 (Jury left the courtroom at 12:53 p.m.)

8 (Luncheon recess taken.)

9 (2:13 p.m.)

10 **THE COURT:** Good afternoon. And would counsel
11 approach the bench, please.

12 (Bench conference on the record:

13 **THE COURT:** Questions from the jury.

14 So we have an attentive jury here. A couple more
15 questions.

16 First question: Was there any overtime slips or work
17 hours submitted while Hersl was allegedly off for about a
18 month?

19 Second, which I am assuming that we've already -- this
20 witness does not know the answer to that --

21 **MR. WISE:** Right.

22 **THE COURT:** -- question. Presumably Mr. Purpura knows
23 the answer to that question.

24 **MR. PURPURA:** That is a presumption.

25 **THE COURT:** That would totally be my presumption.

1 The second question: Sale of drugs and guns, dash,
2 Hersl was there but did not get money. Did Hersl know what was
3 going on?

4 **MR. PURPURA:** That's a good question.

5 **THE COURT:** It doesn't -- he doesn't have a particular
6 date. I mean, you all may think you know which incident.

7 **MR. WISE:** Since we may get to Stepp today, there may
8 be testimony linking Hersl to the sale of drugs. So that may
9 answer that question. It just so happens that he's a likely
10 witness this afternoon.

11 **THE COURT:** Okay. Well, what I would -- if anybody
12 wants to look at them, those are the questions.

13 I would tell the jury, just say thank you; we have a
14 couple more questions; and they may or may not be able to be
15 answered by this particular witness, but counsel will do their
16 best to address them, if possible. Something like that.

17 **MR. WISE:** Thank you.

18 **MR. PURPURA:** Thank you.)

19 (Bench conference concluded.)

20 **THE COURT:** We'll get the jury.

21 (Jury entered the courtroom at 2:16 p.m.)

22 **THE COURT:** All right. Welcome back. You can all be
23 seated.

24 **THE CLERK:** Sir, you're still under oath.

25 **THE WITNESS:** Yes, ma'am.

1 **THE COURT:** And, ladies and gentlemen, let me just
2 indicate, we did receive a couple of additional questions from
3 a juror, and I have shared them with counsel. They may or may
4 not be able to be answered with this particular witness, but
5 counsel will do their best to keep those questions in mind and
6 provide some testimony regarding that as applicable at a later
7 point.

8 **MR. PURPURA:** Your Honor, thank you.

9 **THE COURT:** Go ahead.

10 **BY MR. PURPURA:**

11 **Q.** Mr. Rayam, I asked you earlier this morning about two
12 incidents, just -- there were more, but just two incidents when
13 you were involved in the searches of houses where you stole
14 drugs or took drugs and you later sold those.

15 Do you remember that?

16 **A.** Yes.

17 **Q.** Okay. The first one I asked you about was in August of
18 2016 where there were -- I suggest that there was a hundred
19 caps of heroin and a hundred grams of raw heroin and that you
20 eventually took those drugs and had your cousin in New Jersey
21 sell those drugs.

22 Do you remember that?

23 **A.** You have to refresh my memory on August 16th and --

24 **Q.** Well, do you remember having your cousin in New Jersey
25 sell drugs?

~~RAYAN~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** Okay. Do you remember taking a certain amount of drugs or
3 drugs from a house and then transporting them to New Jersey to
4 have your cousin find someone to sell those drugs?

5 **A.** Well, no. Are you saying August 16th? I'm just asking if
6 you could refresh my memory on --

7 **Q.** Well, forget August of 2016. Anytime, how many times did
8 you steal drugs and take them to New Jersey to be sold?

9 **A.** Well, the one time was -- like I had testified earlier and
10 admitted to, the home invasion that I did where the lady was
11 at; and the other time was when Wayne had approached me and
12 asked me to sell drugs for him.

13 **Q.** Okay. And that's -- the second time was the time that
14 Wayne approached you and Gondo to see if you could sell drugs;
15 is that correct?

16 **A.** Yes. Yes.

17 **Q.** Okay. And you indicated that you could sell the drugs; is
18 that right?

19 **A.** Yes. I said I could do it, yes.

20 **Q.** And the drugs, who supplied those drugs to you?

21 **A.** Wayne.

22 **Q.** Wayne supplied those drugs?

23 **A.** Yes.

24 **Q.** Now, Hersl wasn't there for that conversation; correct?

25 **A.** No.

1 Q. Hersl didn't receive any money for those drugs; correct?

2 A. No.

3 Q. Hersl had no part of that; is that correct?

4 A. Correct.

5 Q. Okay. The second time you spoke about, at least on your
6 testimony this morning -- let's go to the home invasion.

7 Again, with the home invasion, this is when you had the gun and
8 you pointed the gun at this woman, Ms. Anderson or

9 Mr. Anderson's paramour, and you said you were going to kill

10 her. At that point Hersl wasn't involved in any of that, was
11 he, sir?

12 A. No.

13 Q. Okay. Now, let's go to the last time I think you
14 mentioned, the time when you did a -- the whole squad did a
15 search of the house and recovered this 1.5 kilograms of
16 marijuana and a gun.

17 Do you remember that one?

18 A. Yes. You had asked me that earlier.

19 Q. I did, exactly.

20 A. Yes.

21 Q. And the 1.5 kilos of marijuana and the gun you intended to
22 turn in, but Jenkins persuaded you not to turn them in;
23 correct?

24 A. I don't know if kilos, but it was 1 and a half pounds of
25 marijuana.

~~RAYAM~~ ~~CROSS~~

1 Q. 1 and a half pounds?

2 A. Yes.

3 Q. Okay. I apologize.

4 Bottom line is that Jenkins wanted you to turn it in. You
5 didn't turn it in; right?

6 A. No.

7 Q. And you sold it; correct?

8 A. Yes.

9 Q. That was you who sold it, right, or you had someone sell
10 it for you?

11 A. Yes. I had contacted Gondo, and he got -- he was able to
12 sell it through an associate of his.

13 Q. Okay. And Hersl didn't have anything to do with that,
14 either, did he?

15 A. No.

16 Q. Okay. Thank you.

17 Now, how long have you known Mr. Gondo or Detective Gondo?

18 A. Maybe about -- 2007 . . .

19 Maybe since 2009 -- about 2009 or '10, around that time.

20 Q. And you did work with him for a period of time; is that
21 correct?

22 A. Yes.

23 Q. And he became a friend; fair enough?

24 A. Yes.

25 Q. Despite whatever he was doing, and you thought he was

1 doing some shady things, he was still your friend; correct?

2 **A.** Yes.

3 **Q.** And as a friend, he eventually confided certain things to
4 you; is that correct?

5 **A.** Yes. It depends what you -- yeah, I guess, yeah, he
6 talked to me.

7 **Q.** Okay. He actually told you about some bad things or some
8 things that he was up to; correct?

9 Well, let me see if this refreshes your recollection.

10 **A.** Okay.

11 **Q.** Back on April 12th, 2017, when you were speaking to the
12 Government team here (indicating), you told them that Gondo
13 went with Nate G. to buy a gun that was used in a murder. Do
14 you remember telling that to the Government team?

15 **A.** Yes.

16 **Q.** Okay. Who's Nate G.?

17 **A.** One of Gondo' associates or friends at the time.

18 **Q.** Was he a drug dealer?

19 **A.** Yes.

20 **Q.** Okay. And when you said that Gondo went with Nate G.
21 who's a drug dealer, to buy a gun that was used in a murder,
22 what did you mean by that?

23 **A.** Just what I said.

24 **Q.** That what?

25 **A.** He went to the guy Nate to go buy a gun that was used in a

1 murder.

2 Q. So he helped him buy a gun that was eventually used in a
3 murder; correct?

4 A. That's what I was told, yes, but I was just passing --

5 Q. And that's what Gondo told you?

6 A. Yes.

7 Q. In addition, Gondo talked about the time that he got shot.
8 Do you remember that?

9 A. Yes.

10 Q. And he said that it was not related to police, being a
11 police officer. It was actually in retaliation for drug
12 trafficking; correct?

13 A. Yes, that's what I was told.

14 Q. By Gondo?

15 A. Yes.

16 Q. And then he told you that he'd been involved in shootings
17 as well; is that correct?

18 A. Yes, like, before police and everything; that's what he
19 told me, so I was just --

20 Q. Before he was police; right?

21 A. Yes.

22 Q. And finally, he told you that he laid someone out. That's
23 what Gondo told you?

24 A. Did I use those exact words?

25 Q. Yes, in quotes. "Laid someone out."

1 **A.** I didn't take it for as far as him killing someone, but
2 just slang, again, just for laying someone out. Probably
3 putting hands on someone or something. So I didn't take it for
4 where he actually killed someone.

5 **Q.** Do you remember telling the Government team that -- when
6 you spoke to them on April 12th, 2017, that "laid someone out,"
7 at least to you at that time in April of 2017, would mean that
8 Gondo shot and killed someone?

9 **A.** I could have told them that as well. But, like I said,
10 you could take it both ways. That's why. So if I told 'em
11 that, I told 'em that. But you could still take it both ways.
12 That's where I'm at today.

13 **Q.** Now, you do have a plea agreement in this case; is that
14 correct?

15 **A.** Yes, sir.

16 **Q.** And your plea agreement, the letter date is June 28th,
17 2017. You don't have it in front of you, do you?

18 **A.** No.

19 **MR. PURPURA:** Defense Exhibit, Crystal, for
20 identification would be what number? 12. Make it 13.

21 **BY MR. PURPURA:**

22 **Q.** I'm going to now show you what has been marked for ID only
23 Hersl 13. Do you recognize this? Take your time (handing).

24 Let me get to your signature page, help you out, speed
25 things along.

~~RAYAM~~ ~~CROSS~~

1 A. Yes. Yes.

2 Q. And this would be your plea agreement; is that correct,
3 sir?

4 A. Yes.

5 Q. Okay. And the date of the letter is June 28th, 2017; does
6 that refresh your recollection?

7 A. Yes.

8 Q. And it was signed, apparently, October 4th of 2017;
9 correct?

10 A. Yes.

11 Q. Okay. And what you pled guilty to is a single count; is
12 that correct? Do you need to look at it?

13 A. I mean, I'm not really caught up on terms as far as the --

14 Q. All right. Fair enough.

15 A. -- as far as how the law is stated, but I know what I
16 "pledged" guilty to as far as --

17 Q. Okay. Let me ask you this: Did you -- it says [reading]:
18 The defendant agrees to plead guilty to Count 1 of the
19 indictment.

20 Is that what you pled guilty to?

21 A. Yes.

22 Q. Okay. And that's the only count you pled guilty to is
23 Count 1 of the indictment, which is the racketeering
24 conspiracy, is that correct, sir, in your plea agreement?

25 A. Yes.

1 Q. Okay.

2 (Counsel conferred.)

3 MR. PURPURA: Can we approach real quick, Judge?

4 THE COURT: Yes.

5 (Bench conference on the record:

6 MR. PURPURA: Judge, I'd like to use Hersl 12 as
7 demonstrative with this witness (handing). It's illustrative
8 as well. Maybe not illustrative. Demonstrative, to show that
9 he has not pled to -- there's no -- it still feels like I'm --
10 that he has not -- he's not pleading to any substantive charge.

11 THE COURT: I don't know what you mean by that or what
12 you expect the jury to understand. I mean, conspiracy is
13 certainly a criminal act carrying the same 20 years as the --

14 MR. PURPURA: But no other substantive charges, such
15 as a 924(c) or such as a substantive robbery, which he's
16 clearly admitted to two separate robberies.

17 THE COURT: Sure. But why can't you just ask him
18 that? Why does he need to see something that says "Hobbs Act
19 robbery" and has Mr. Hamilton's name on it?

20 MR. PURPURA: Fair enough.

21 THE COURT: Objection sustained.

22 MR. WISE: Just in terms of -- this 924(c) question
23 keeps -- this 924(c) issue keeps coming up. I think he should
24 have to lay a foundation that he even knows what 924(c) is.
25 I'm not sure he does.

1 **THE COURT:** Well, we won't ask it with just the
2 number. I think he's been asking it with a description, use of
3 a firearm in furtherance of a crime of violence.

4 **MR. WISE:** Yeah, but I think with a lot of this, like,
5 they sort of hem and haw and sort of move their heads around
6 like, Yeah; I didn't have to plead to that. But they don't
7 actually -- I'm not sure they even know what he's really asking
8 about.

9 **THE COURT:** Go ahead.

10 **MR. PURPURA:** Thank you.)

11 (Bench conference concluded.)

12 **BY MR. PURPURA:**

13 **Q.** We left off, Mr. Rayam, that you did plead guilty to the
14 conspiracy to commit racketeering; correct?

15 **A.** Yes.

16 **Q.** You did not plead guilty to a separate count which charged
17 you with use of a handgun in the commission of a crime of
18 violence, in particular the Anderson home invasion, did you,
19 sir?

20 **A.** No.

21 **Q.** You did not plead guilty to a separate count which charged
22 you with use of a handgun in the commission of a crime of
23 violence, in particular the invasion of the -- what was it, the
24 retail bird seller's house?

25 **A.** No.

1 Q. Bird feed house, no; right?

2 A. No.

3 Q. And you do know that the one count that you pled guilty to
4 has a maximum period of incarceration of 20 years; is that
5 correct, sir?

6 A. That's what I was told, yes.

7 Q. Racketeering?

8 A. Yes. Yes.

9 Q. Okay. The -- just last few questions.

10 You've already indicated that back in 2009, 2010, you lied
11 to Internal Affairs involving Michael Sylvester; correct?

12 A. Yes.

13 Q. And you lied multiple times during that time; is that
14 correct, sir?

15 A. Yes.

16 Q. You've already indicated that in at least the 13 statement
17 of probable causes that you can remember where you were the
18 affiant or you were the author on those, that you lied on at
19 least 13 of those; is that correct, sir?

20 A. Yes, I did.

21 Q. And there's also an oath with each one of those 13; is
22 that correct?

23 A. Excuse me?

24 Q. There's an oath which goes with each one of those 13?

25 A. I broke my oath. Yes.

~~RAYAN~~ ~~CROSS~~

1 Q. That you swear what you're saying is the truth, the whole
2 truth; correct?

3 A. Yes.

4 Q. And despite that, you lied at least 13 times there; is
5 that correct, sir?

6 A. Yes.

7 Q. That you lied to a state District Court judge in a
8 warrant, at least a one-warrant application; is that correct,
9 sir?

10 A. Yes.

11 Q. And you know that each time you do lie to a District Court
12 judge with a warrant, that's perjury; is that correct, sir?

13 A. I totally understand my faults, yes.

14 Q. The same thing, you also lied to Circuit Court judges with
15 warrants as well in the same manner you lied to that
16 District Court judge in the Westminster case; is that correct,
17 sir?

18 A. Yes.

19 Q. And you know that's perjury as well; is that correct, sir?

20 A. Yes.

21 Q. And you know you did that on multiple times as well; isn't
22 that correct, sir?

23 A. Yes.

24 Q. You lied to Circuit Court judges in motion hearings in
25 state court when you were there on issues of probable cause and

1 you took the oath. You lied to 'em then; isn't that correct,
2 sir?

3 **A.** Correct, yes.

4 **Q.** You lied to juries, juries like this, when you appeared in
5 those cases and defendants were sitting there where Mr. Hersl's
6 sitting there, and you gave a story which was not true. That's
7 a lie as well; isn't that correct, sir?

8 **A.** With money being taken, yes.

9 **Q.** You stole money; correct?

10 **A.** Yes.

11 **Q.** You stole narcotics. You stole guns; right?

12 **A.** Yes.

13 **Q.** You resold or had people resell those narcotics in the
14 city of Baltimore outside the city of Baltimore; isn't that
15 correct, sir?

16 **A.** Yes, I did.

17 **Q.** You stole those guns and the guns you were mandated to
18 take off the street, and you put 'em back on the street in some
19 occasions; isn't that correct, sir?

20 **A.** On one occasion or two occasions, yes. It's the occasions
21 I told you about, yes.

22 **Q.** You had a conversation, sir, when you were in
23 Howard County Detention Center when you were thinking about all
24 those lies and how you can't stop lying, the conversations with
25 Ward, Hendrix, Hersl, and others who were around you; and you

1 thought you had a problem with lying, didn't you?

2 **A.** No.

3 **Q.** Do you have a problem with lying?

4 **A.** No.

5 **Q.** You just lie when you need to?

6 **A.** No. I'm not lying now, and it's never too late to do the
7 right thing. That's just it.

8 **Q.** And now is the right thing?

9 **A.** The right thing was on March 1st when I got locked up.

10 **Q.** And, sir, you understand that your cooperation today --
11 and you're trying to get cooperation; is that correct, sir?

12 **A.** Yes.

13 **Q.** And despite every other time that you've lied -- you can't
14 even count the amount of times you've lied, can you?

15 **A.** I have a clean conscience.

16 **Q.** Well, can you answer that question?

17 **A.** Well, all the times I lied, I admitted to.

18 **Q.** How many, ballpark?

19 **A.** I told the state everything or the Government, the
20 prosecution.

21 **Q.** Despite all those lies to judges, District Court,
22 Circuit Court, to Internal Affairs, to juries, despite all
23 those lies, why should this jury believe you today?

24 **A.** Like I said, it's never too late to do the right thing,
25 and I have a clean conscience. I go to sleep knowing that what

1 I did was wrong, and I'm ready for my consequences and my
2 punishment.

3 The judge could give me more time than what the
4 Government, the plea deal is. I took an oath; I broke it. I'm
5 not looking for any sympathy.

6 I know what I did. I'm not blaming Wayne for being the
7 supervisor. I blame myself because at the end of the day, we
8 all had that badge, the Baltimore City Police Department. So
9 whether you were a sergeant, a lieutenant, or a captain, we
10 still had a badge. I broke it, and I'm saying what I did was
11 wrong.

12 **Q.** All right.

13 **A.** So I'm standing up for that.

14 **Q.** And you did wrong, and you did lie over and over again;
15 correct? And you don't want to spend one extra day in jail
16 than you have to, do you, sir?

17 **A.** I have a clean conscience.

18 **Q.** Do you want to spend one extra day than you have to, sir,
19 in jail?

20 **A.** I'll spend as much time as the judge gives me.

21 **Q.** You will.

22 **MR. PURPURA:** Thank you. I have no further questions.

23 **MS. WICKS:** Good afternoon, sir.

24 **THE CLERK:** Ms. Wicks.

25 **THE COURT:** Ms. Wicks, we're going to get that

1 microphone for you.

2 CROSS-EXAMINATION

3 **BY MS. WICKS:**

4 **Q.** Good afternoon, sir.

5 **A.** Good afternoon, ma'am.

6 **Q.** In addition to lying in an attempt to protect
7 Michael Sylvester back in 2009, you also had a drug
8 relationship with Mr. Sylvester; right?

9 **A.** I guess you could say that yes, yes. Yes. Yes, I did. I
10 did.

11 **Q.** Well, okay, I guess I -- would you call it a drug
12 relationship when he offered to flip money that you got from
13 workmen's compensation, so you gave him part of that money; he
14 was going to sell drugs and flip your money for you; right?

15 **A.** Yes. I told all that to the --

16 **Q.** Pardon me?

17 **A.** I admitted all of that to the Government. I told the
18 Government that, yes.

19 **Q.** I'm not -- my question was: Is that a drug relationship?

20 **A.** Yes.

21 **Q.** Okay. And in addition to that, around 2008, he had 10 to
22 15 pounds of weed, and you had called Snell up in Philadelphia
23 to sell that; right?

24 **A.** Correct. I -- could have been 2008 or 2009, but correct.

25 **Q.** Okay. But it was back -- this is --

1 **A.** I know I said --

2 **Q.** Back when you weren't even on GTTF; correct, sir?

3 **A.** Correct.

4 **Q.** Okay. And there was also drugs that you all took during a
5 search in Druid Park; right? And you sold those drugs too;
6 correct?

7 **A.** I know I admitted to -- if you could refresh my memory on
8 the Druid Park. What was --

9 **Q.** Well, you were there in Druid Park.

10 **A.** Yeah. What year was that?

11 **Q.** Back -- back in this time frame with Michael Sylvester,
12 there's a search warrant at Druid Park. And you -- there were
13 drugs taken and they were sold, and you made money off of that;
14 right?

15 **A.** You will have to refresh my memory. But I know I told
16 the -- if I could read the notes, but I'll admit to it. If
17 it's down on paper I did, yes.

18 **Q.** Okay. So if it's on the paper and you told the FBI, then
19 it must be true; correct?

20 **A.** Yes. It's just -- I'm just saying right now I can't
21 recall it, but --

22 **Q.** Okay. And so when you took --

23 **THE COURT:** Wait. Wait. Wait. Wait. One at a time.

24 **BY MS. WICKS:**

25 **Q.** Are you done with your answer?

1 **A.** Yes, I'm done.

2 **Q.** Okay. And so when you told the FBI that
3 Sergio Summerville had given consent and provided the key to
4 his storage locker, that was the truth; correct?

5 **A.** Yes, that was the truth, yes.

6 **Q.** Okay. And when you told them --

7 **MS. WICKS:** Court's indulgence.

8 **BY MS. WICKS:**

9 **Q.** -- that possibly while you were in the
10 Gun Trace Task Force, before Sergeant Allers was your sergeant,
11 that you witnessed an officer carry a bag into a house and
12 plant a gun; correct?

13 **A.** Oh, correct. Yes, yes.

14 **Q.** And you didn't tell anybody about that back then; correct?

15 **A.** No.

16 **Q.** And --

17 **MS. WICKS:** Court's indulgence.

18 **BY MS. WICKS:**

19 **Q.** Back in -- on April 12th of 2017, you met with the FBI.
20 And you told them that you recovered 10 to 15 pounds of
21 marijuana from a storage unit on Druid Park Avenue. When you
22 got there, Sylvester had the guy and the marijuana. Sylvester
23 took the marijuana, sold it, and gave you a few thousand
24 dollars.

25 **A.** Yes.

1 Q. Do you remember that?

2 A. Yes, yes.

3 Q. And Snell, the person that you called about the marijuana
4 that you had gotten from Sylvester, that's the same person that
5 was a Philadelphia police officer that you called to sell drugs
6 that were seized last year; correct?

7 A. Yes.

8 Q. I'm sorry. Not last year. 2016 --

9 A. I understand.

10 Q. -- correct?

11 A. Yes.

12 Q. Okay. And so in addition to your family members in
13 New Jersey that you had selling drugs, you also arranged,
14 through Snell, to sell drugs in Philadelphia; correct?

15 A. Yes. Yes.

16 MS. WICKS: Court's indulgence.

17 BY MS. WICKS:

18 Q. Mr. Purpura was asking you some questions about lying in
19 court documents. And at one point there was a case, I believe
20 that was -- I believe the defendant was Gary Clayton?

21 A. Okay.

22 Q. And that's a case where you lost a Franks hearing;
23 correct?

24 A. Yes.

25 Q. The judge there found that you had been untruthful in an

1 affidavit; correct?

2 **A.** His words were that it was a sloppy case, 'cause I didn't
3 do the correct paperwork.

4 **Q.** You're saying that was the judge's words?

5 **A.** Well, that's what I was told by another State's Attorney
6 at the time, that it was just a sloppy case.

7 **Q.** Okay. So you were not in the courtroom -- you're not
8 saying that you were in the courtroom when the judge
9 commented --

10 **A.** Yeah. Well, yes, when the judge -- I was in the courtroom
11 when the judge --

12 **Q.** You were in the courtroom?

13 **A.** Yes. Yes.

14 **Q.** And that's not what the judge said; right?

15 **A.** No.

16 **Q.** What the judge --

17 **A.** The judge said that --

18 **THE COURT:** I'm sorry. We really --

19 **BY MS. WICKS:**

20 **Q.** Well, my answer [sic] was: That's not what the judge
21 said; right?

22 **A.** Correct.

23 **Q.** Okay. The judge found that you had lied, indicating that
24 the woman -- first of all, you had lied about trying to ring
25 the doorbell that apparently didn't work; correct?

1 **A.** Well, I'm not sure what the judge -- the judge
2 specifically didn't say what I lied on. He just said I wasn't
3 credible. So I --

4 **Q.** Okay. He just found you were unbelievable, period; right?

5 **A.** For that case, yes.

6 **Q.** Okay. And you know that the woman that lived in that
7 house had testified and provided an affidavit; correct?

8 **A.** Yes.

9 **Q.** And she had indicated that the doorbell didn't work;
10 correct?

11 **A.** That was her testimony, yes.

12 **Q.** Okay. And that the door -- and there are pictures, and
13 the doorbell was actually outside on the front -- on the --
14 there were two doors. There was a door to the building and
15 then a door to the apartment; correct?

16 **A.** Yes.

17 **Q.** And the doorbell was outside -- the outside door; correct?

18 **A.** Correct.

19 **Q.** And so when you were claiming to have been in the hallway
20 ringing the doorbell, that couldn't have happened 'cause that's
21 not where the doorbell was; right?

22 **A.** No. It did happen 'cause she came to -- she came to the
23 door to answer the door, so she was alerted that we were there.

24 **Q.** Okay. The doorbell that she testified didn't work; right?

25 **A.** That was -- yes.

1 Q. Okay. And in addition, you claimed to be able -- to see
2 in the apartment and that while she was trying to shut the
3 door, you claimed she was also shoving part of a table
4 underneath the couch; correct?

5 A. No, I didn't say it was simultaneously.

6 Q. Well, you did testify that she was trying to shut you out
7 of the apartment; right?

8 A. Yes.

9 Q. And you did claim to have been able to see that before she
10 shut the door; correct?

11 A. Yes. Yes.

12 Q. Yes. Thank you.

13 Now, there have been some questions about your -- you were
14 close with Gondo; correct?

15 A. Yes.

16 Q. And he had close friends that he had grown up with;
17 correct?

18 A. Yes.

19 Q. And they were drug dealers; right?

20 A. Yes.

21 Q. And you knew this; right?

22 A. Yes.

23 Q. And you knew that he, at least on one occasion, he -- he
24 stopped Jenkins from arresting Kyle Wells; right?

25 A. Yes.

1 Q. And you knew on one occasion he stopped Glover from
2 arresting Wells as well; correct?

3 A. Glover?

4 Q. Yes.

5 A. I don't know who Glover is.

6 Q. The HIDTA -- you don't -- you were never introduced to the
7 HIDTA guy, Glover?

8 A. I probably was introduced, but I don't remember his name.
9 That's all I'm saying.

10 Q. Okay. Were you aware of, other than -- were you aware of
11 other occasions that Gondo intercepted people from arresting
12 Brill or Kyle?

13 A. Yeah. It was the one time where Wayne and an
14 African-American male detective that was there, he could have
15 been -- I shouldn't say that. But he could have been Glover,
16 but I don't know his name.

17 Q. So you know of two occasions?

18 A. No. It was just that one occasion.

19 Q. Well, Glover -- the African-American detective was with
20 Jenkins or that was a separate occasion?

21 A. Maybe I -- I'm confusing things. I just know it was an
22 incident where it was Wayne and it was another detective there.
23 And that was the one occasion that I was talking about. I
24 don't know who his name was, though.

25 Q. Okay. And speaking of getting confused, you weren't

~~RAYAM~~ ~~CROSS~~

1 confused -- we listened to a recording from Gondo -- the
2 wiretap of Gondo's phone earlier today when you were discussing
3 with Gondo the search of the Summerville storage unit, and you
4 claimed to Gondo that you had to give money to Jenkins.

5 Do you remember that call?

6 **A.** I did. I claimed that, yes.

7 **Q.** Okay. And your testimony today was at that point, you
8 were actually lying to Gondo; right?

9 **A.** Yeah. I told the prosecution that initially, that I never
10 gave money to Wayne.

11 **Q.** Okay. I'm not asking about what you first -- I'm talking
12 about your testimony today under oath was that on that phone
13 call, you had lied to Gondo; correct?

14 **A.** Yes.

15 **Q.** Okay. You told Gondo that you had to give money to
16 Jenkins; right?

17 **A.** Yes.

18 **Q.** And you were telling Gondo that because you didn't want to
19 have to give money to Gondo?

20 **A.** Correct.

21 **Q.** Okay. So that was over \$100 you were lying to your friend
22 Gondo; right?

23 **A.** Correct.

24 **MS. WICKS:** Court's indulgence.

25 **BY MS. WICKS:**

~~RAYAM~~ ~~CROSS~~

1 Q. Back in 2009, you used to hang out with a woman named
2 Tamaren Daniels; correct?

3 A. Yes.

4 Q. And Ms. Daniels was a person that hung out a lot with drug
5 dealers; correct?

6 A. Yes.

7 Q. And she would let you know when she was out with drug
8 dealers and where you could go to rob them; correct?

9 A. Yes.

10 Q. So you would be -- back in 2009, you would be breaking
11 into drug dealers' residences while they were out socializing
12 so you could get money and drugs and whatever else you found
13 there; right?

14 A. Yes.

15 Q. Now, this plea agreement that you have with the
16 Government, it also includes immunity for your testimony;
17 correct?

18 A. Yes.

19 Q. Okay. So everything that you've talked to the Government
20 about, even if it's not contained within the conspiracy charge
21 that you pled to, you're not getting charged for those things;
22 correct?

23 A. Correct.

24 Q. And so this -- these other times that you've robbed drug
25 dealers back for years now, these other times that you've sold

~~RAYAM~~ ~~CROSS~~

1 drugs, these other times that you've lied, you're not getting
2 charged for those things; correct?

3 **A.** Correct.

4 **Q.** In addition, you talked to the Government about some times
5 that you were not truthful on your taxes; correct?

6 **A.** Correct.

7 **Q.** And, in fact, during this time period where you're saying
8 you're making extra money by claiming overtime that you're not
9 working, you also declared charitable donations that you hadn't
10 even made; correct?

11 **A.** Yes. I did cheat on my taxes as well.

12 **Q.** Okay. And in addition, for the withholding for your
13 Maryland and state taxes, you had changed your deductions and
14 exemptions so there would be less money paid in taxes; correct?

15 **A.** Yes.

16 **Q.** And that's what you did for several years, 2012, 2013,
17 2014, 2015; correct?

18 **A.** Yes.

19 **Q.** And that's in addition to the money that you're making
20 from helping out Mr. Sylvester, robbing drug dealers with
21 Ms. Daniels. Everything that you've been doing for years, that
22 was tax-free money as well; correct?

23 **A.** Correct, yes.

24 **MS. WICKS:** Court's indulgence.

25 **BY MS. WICKS:**

1 Q. And this -- the home invasion where you threatened this
2 woman with a gun in her face and that you were going to kill
3 her, that was a home invasion you committed with Kyle Wells;
4 correct?

5 A. Yes.

6 Q. And he was not a police officer; right?

7 A. No, no.

8 Q. He was an old friend of Gondo's who was a drug dealer;
9 correct?

10 A. Yes.

11 Q. And, in fact, he wanted to -- instead of just robbing, he
12 actually wanted to kill the guy; right?

13 A. He -- they had -- well, Kyle had a mission that, yes. And
14 I wasn't, of course, for that.

15 Q. Okay. Well, you weren't with that, and you didn't report
16 it to anybody; right?

17 A. No.

18 Q. Okay. So a known drug dealer who you know carries guns
19 wanted to kill somebody, thought it would be a good idea, was
20 coming up with a plan to kill somebody, and you didn't tell the
21 authorities; correct?

22 A. No, I didn't.

23 MS. WICKS: Court's indulgence.

24 BY MS. WICKS:

25 Q. Now, there were drugs that -- well, I guess your claim is

~~RAYAM~~ ~~CROSS~~

1 you started selling drugs for Jenkins to pay him back?

2 **A.** When -- do you want me to explain or just say yes or no?

3 I don't know.

4 **Q.** A yes or no.

5 **A.** Yes.

6 **Q.** Okay.

7 **A.** On a couple occasions.

8 **Q.** And you were selling narcotics that had been stolen from
9 people; correct?

10 **A.** With Jenkins or all together? I don't -- yes.

11 **Q.** Yeah. I mean --

12 **A.** Okay.

13 **Q.** You had drugs sold that apparently you and Ms. -- then, I
14 guess, Officer Sylvester had stolen; correct?

15 **A.** Yes.

16 **Q.** Then you had drugs that were funneled to you from Jenkins;
17 correct?

18 **A.** Yes.

19 **Q.** And you sold those narcotics; correct?

20 **A.** Yes.

21 **Q.** And that was cocaine, heroin, marijuana. Any other drugs?

22 **A.** That was it.

23 **Q.** Okay. And you profited from selling those narcotics;
24 correct?

25 **A.** Yes.

~~RAYAM~~ ~~CROSS~~

1 Q. You didn't declare income from that over all these years;
2 correct?

3 A. No.

4 Q. And then you also illegally sold handguns as well;
5 correct?

6 A. On the one occasion, yes.

7 Q. Only on one occasion?

8 A. Well, I took -- I took it one -- Kyle had sold the other
9 gun from the home invasion and from the car stop which led to
10 the consent -- well, the search with the pound and a half of
11 marijuana and the gun. I had sold that one through Gondo.

12 Q. Okay. And so -- and the home invasion that you committed
13 with Kyle Wells, part of what he got was a gun that he then
14 sold --

15 A. Yes.

16 Q. -- and you got other parts of the property that were
17 stolen; correct?

18 A. Yes.

19 Q. But that was a joint effort; correct?

20 A. Yes.

21 Q. To get what you could from that house, from that drug
22 dealer; correct?

23 A. Yes.

24 Q. And you have -- you lied to other police officers during
25 all of this time; correct?

1 **A.** Yeah. When it came to the money being taken, yes.

2 **Q.** Okay. Well, not just the money -- well, yeah, when it
3 came to the money, you even lied to Gondo; right?

4 **A.** Yes.

5 **Q.** Okay. So on the unit, you were lying to other people on
6 the unit because you didn't want them to be getting money. If
7 you could avoid sharing the money, you would; correct?

8 **A.** I guess -- yeah, because of that one occasion, I guess.

9 **Q.** Well, you lied to Gondo on that one occasion; right?

10 **A.** We all was taking money, but I get your question. Yes,
11 okay.

12 **Q.** Okay. And there were other times when you were able to
13 secret the money and you didn't tell anybody else about it;
14 right?

15 **A.** If I -- I don't know. I think I pretty much always shared
16 it with someone.

17 **Q.** Are you sure about that?

18 **A.** I can't recall. But if I said it, I probably did. But I
19 can't recall at a certain time right now.

20 **Q.** Okay. Well, I'm -- you're being called as a witness here,
21 and I'm asking your recollection of what you did.

22 Do you recall a time when you took money from a person --

23 **A.** Oh, you know, yes, I do. I'm sorry. My -- just a long
24 day. I understand. Yes. One on North Avenue and another one
25 in an apartment, yes. Yes, I do. Yes.

~~RAYAM REDIRECT~~

1 Q. Okay. So now there's two times that you can remember
2 taking money --

3 A. It's in my plea agreement, yes.

4 Q. Pardon me?

5 A. It's in my plea agreement, yes.

6 Q. Okay. There's two times when you took money and you
7 didn't let anyone else know about it; correct?

8 A. Correct. Correct.

9 Q. Until you came and told the Government about it; right?

10 A. Correct.

11 Q. There was no one suspected it until you told the
12 Government; right?

13 A. Correct.

14 Q. Thank you.

15 MS. WICKS: Court's indulgence.

16 I have no further questions, Your Honor. Thank you.

17 THE COURT: Thank you.

18 Any redirect, Mr. Hines?

19 MR. HINES: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. HINES:

22 Q. Mr. Rayam, I'd like to ask you a couple of questions about
23 the questions that Mr. Purpura asked earlier today.

24 Mr. Purpura asked you about the search warrant affidavit
25 for Westminster.

1 A. Yes.

2 Q. And he -- he asked you, except for you, Jenkins, Hersl,
3 and Gondo all thought it was a darned good warrant. Is that
4 what he asked you?

5 A. Yes, yes.

6 Q. Now, did that darned good warrant include surveillance?

7 A. As far as what I did?

8 Q. Yes. Did it include your -- any surveillances that you
9 wrote into the warrant affidavit?

10 A. I guess I don't -- I don't get the question. I'm sorry.

11 Q. So leading up to the Westminster search, did you conduct
12 surveillances?

13 A. Yes.

14 Q. Was one of those surveillances the surveillance you
15 testified about earlier involving Mr. Jenkins?

16 A. Yes.

17 Q. And what, again, did Mr. Jenkins say to you during this
18 surveillance?

19 A. Oh, that he would -- he thought about knocking the person
20 out with -- that had -- knocking Mr. Hamilton out that had the
21 bag.

22 Q. And the surveillance was part of the warrant; is that
23 right?

24 A. Yes.

25 Q. You said earlier that you had a conversation with Jenkins

1 before Westminster when Jenkins sent Clewell to the other
2 location?

3 **A.** Yes.

4 **Q.** What was that conversation?

5 **A.** Just -- we just knew that if it was going to be large sums
6 of money, that, you know, we would take some -- you got to
7 remember that, like I said also, the day before or a couple
8 days before while we were doing the surveillance and he had
9 that bag in his hand, we knew that he went straight back to his
10 house.

11 So whatever Wayne Jenkins believed that was in the bag,
12 which was money, we knew that it was in the house. So pretty
13 much that's why we still were going to go back and was hoping
14 to find drugs, but we didn't find anything. Then we still took
15 the cash -- or I took the cash, but I informed him about it.

16 **Q.** When you answered Mr. Purpura's question, you said that
17 Jenkins only wanted to be around certain people that -- and you
18 didn't get a chance to finish your question -- or your answer.

19 What was your answer?

20 **A.** That he can trust.

21 **Q.** Was Hersl one of those people that he could trust?

22 **A.** Yes.

23 **Q.** What did you understand that Hersl could be trusted to do?

24 **A.** As far as just, you know, taking money. On top of that, I
25 was told -- I knew that he had multiple --

~~RAYAM REDIRECT~~

1 **THE COURT:** Wait. Wait. Wait. Wait. Please stop.

2 **MR. HINES:** I'll move on, Your Honor.

3 **BY MR. HINES:**

4 **Q.** Mr. Rayam, you were asked by Mr. Purpura about some of the
5 drugs that you took and sold. And you said that you didn't
6 give any of the money from that to Mr. Hersl, those drug sales;
7 is that right?

8 **A.** Yes.

9 **Q.** Did Daniel Hersl give you any money from the sale of
10 cocaine --

11 **MR. PURPURA:** Objection, Judge, there's -- can we
12 approach the bench?

13 **THE COURT:** Sure.

14 (Bench conference on the record:

15 **MR. PURPURA:** There was a question early on by
16 Mr. Hines which I didn't object to where he intimated that
17 there was a sale of cocaine for four and a half -- 4.5 ounces
18 by Hersl. And that was a question. There was no evidence of
19 this. And now he's about to ask the same thing again.

20 There's no evidence at all that Hersl ever sold any
21 cocaine, so what's the basis for the question? There has to be
22 a good --

23 **THE COURT:** What are you expecting to get --

24 **MR. HINES:** So it's in the Jencks, Your Honor.

25 Mr. Hersl was involved in two aspects of the drug sale for

1 Mr. Armstrong, the first being that Jenkins and Stepp and Hersl
2 sold cocaine that was seized from the storage locker.

3 Stepp sold the drugs and returned the proceeds to
4 Jenkins and Hersl. So that's part of the question which
5 Mr. Purpura opened the door on by asking if Rayam ever gave
6 money to Hersl.

7 Second part is Mr. Hersl recovered 4 ounces of cocaine
8 from the storage unit himself, and that was never turned into
9 evidence. So we should be able to ask Mr. Rayam, like
10 Mr. Purpura was able to ask of him, whether he ever got drug
11 sale money from Mr. Hersl. That's all I'm going to ask.

12 That way when it -- later on when Mr. Stepp testifies
13 to this, you know, there can't be -- you know, we can argue
14 that, just like Mr. Rayam didn't get money from -- didn't give
15 money to Mr. Hersl, Mr. Hersl didn't give it back to him
16 either.

17 **THE COURT:** I'm confused.

18 **MR. PURPURA:** The witness doesn't -- there's no
19 good-faith basis the Government has. The witness has no idea
20 what the Government's talking about here on these questions.
21 He has no knowledge of any of these things.

22 This information comes to the Government through
23 upcoming witness, at best. A witness was given multiple
24 different stories.

25 **THE COURT:** Okay. Can I -- you said it's in the

~~RAYAM REDIRECT~~

1 Jencks. Is it in the Jencks for this witness?

2 **MR. PURPURA:** No.

3 **MR. HINES:** I can ask: Did Mr. Hersl give you any
4 money from the sale of cocaine?

5 And it's a yes or no --

6 **THE COURT:** But this witness has not so far, up until
7 right now, told you that Mr. Stepp gave him money from cocaine
8 that came from Hersl?

9 **MR. HINES:** He didn't get any money from Mr. Hersl.

10 **THE COURT:** He didn't get any money from Mr. Hersl.

11 **MR. HINES:** Correct. Right. Just like --

12 **THE COURT:** So does he know anything about this
13 transaction?

14 **MR. HINES:** Just like Mr. Hersl evidently didn't know
15 anything about the other drug transactions --

16 **THE COURT:** Okay. No. No. Objection is sustained.)
17 (Bench conference concluded.)

18 **THE COURT:** We'll move on.

19 **BY MR. HINES:**

20 **Q.** Mr. Rayam, were there occasions when you saw Mr. Hersl
21 recover drugs and not submit them into evidence?

22 **A.** Yes.

23 **Q.** Mr. Purpura asked you if you believed that Daniel Hersl
24 was an informant or a plant for Internal Affairs. And you
25 said, "Yes, at one time you did"?

1 **A.** Yes.

2 **Q.** Why did you believe that?

3 **A.** Well, pretty much anybody that comes -- first of all, the
4 unit was doing something that we shouldn't have been doing.
5 And whenever anyone comes to a unit that's new that I didn't
6 know of or we didn't know of, it was just -- pretty much we
7 just thought, okay, be careful around this person until we get
8 to know this person.

9 So that's what I was -- that's what I meant, like, you
10 know, you don't know who this person can be until you get to
11 know 'em. And I got to -- we got to know him. I got to know
12 him.

13 **Q.** And what happened when you got to know him?

14 **A.** That he was okay with taking money, just as -- just as I
15 was.

16 **Q.** And with respect to the search of the storage locker and
17 the taking of money and splitting it at Archbishop Curley,
18 Mr. Purpura asked you some questions about the bag that the
19 money was in?

20 **A.** Yes.

21 **Q.** Was that a Baltimore Police Department evidence envelope
22 that the money was in?

23 **A.** No.

24 **Q.** Was -- where did Hersl put the money after he got it from
25 the van?

~~RAYAM~~ ~~RE CROSS~~

1 **A.** Back in the minivan.

2 **Q.** And after he took it out of the minivan, did he give you
3 some of that money?

4 **A.** Yes. He took it from the minivan. We went to 7-Eleven,
5 got something to drink. Then we went to the parking lot and
6 split the cash.

7 **Q.** At any point in between the time that he seized the money,
8 took the money, and then gave you money, did he submit that
9 into an evidence bag?

10 **A.** No.

11 **Q.** How about the money that was taken from Westminster, the
12 20,000; did that go into a Baltimore Police Department evidence
13 bag?

14 **A.** No.

15 **MR. HINES:** No further questions.

16 **THE COURT:** Okay.

17 **MR. PURPURA:** Just a couple of minutes, if I may.

18 Thank you, Your Honor.

19 **RE CROSS-EXAMINATION**

20 **BY MR. PURPURA:**

21 **Q.** Mr. Rayam, just a very few questions. Just give me a
22 second.

23 I asked you questions about Westminster before; right?

24 **A.** Correct.

25 **Q.** Okay. And you spoke, as I indicated, in a proffer

1 session, actually, the very first proffer session with the
2 Government March 21st, 2017, or the second proffer session. In
3 detail you told them about Westminster and what you did and
4 what you didn't do.

5 Do you remember that?

6 **A.** Correct.

7 **Q.** And you told them in detail that Jenkins told you to take
8 the money. You took the money; right?

9 **A.** Correct.

10 **Q.** And you told them in detail that up to that time, you were
11 not going to take money out of Westminster; it wasn't your
12 intent to take money. Right?

13 **A.** Correct, I wasn't going to take it at first, no.

14 **Q.** Thank you.

15 Now, when you said that you saw Hersl -- saw Hersl take
16 drugs, was it an incident that drugs were thrown out because
17 you weren't going to go after the defendant when you found a
18 gun and you were looking for guns, and you didn't care about
19 drugs 'cause that's what the Gun Squad was about? If you got a
20 little bit of drugs, sometimes you wouldn't go to the steps of
21 putting in Evidence Control. You just take the drugs and throw
22 them out?

23 **A.** Each incident is wrong in itself.

24 **Q.** It may be wrong. It should be submitted. But that's what
25 happened; right? That's what we were talking about, that if

1 you threw drugs out, it was because you weren't interested in
2 drugs and you threw them out; right?

3 **A.** No. I was talking about a different incident.

4 **Q.** What incident and when?

5 **A.** This is North Avenue, one of the incidents where I
6 admitted to taking money, which led to a drug investigation to
7 where an individual -- we wound up getting consent for his
8 house. And the individual had drugs, and we were looking for a
9 gun.

10 So we didn't get a gun, but -- so we didn't lock the
11 person up. And that's when I had testified earlier that
12 Sergeant Allers said, "Hey, did you guys -- what did you do
13 with -- did you guys submit the drugs?"

14 And Mr. Hersl was like, "I took care of it."

15 And that's when Sergeant Allers was like, "You guys are
16 going to get me in trouble."

17 That's the incident that I was referring to.

18 **Q.** Did you follow up to see if the drugs were submitted?

19 **A.** (No response.)

20 **Q.** Did you follow up to see if the drugs were submitted?

21 **THE COURT:** Wait. Wait.

22 **MR. PURPURA:** I'm sorry.

23 **THE WITNESS:** The drugs weren't submitted.

24 **BY MR. PURPURA:**

25 **Q.** Did you follow up to see if they were submitted?

~~RAYAN~~ ~~RECRUSS~~

1 **A.** It was no need for me. No, I didn't follow up to see --

2 **Q.** Do you know what kind of drugs they were?

3 **A.** I believe it was -- could have been Ziplocs or something
4 of coke probably.

5 **Q.** What do you mean "probably"?

6 **A.** That's what I'm saying. I believe it could have been
7 coke.

8 **Q.** How much coke?

9 **A.** I can't really recall. It was a small amount, but it
10 was . . .

11 **Q.** And --

12 **MR. PURPURA:** No further questions.

13 Thank you.

14 **THE COURT:** Anything else, Ms. Wicks?

15 **MS. WICKS:** No.

16 **THE COURT:** Anything else?

17 **MR. WISE:** No, Your Honor.

18 **THE COURT:** Okay. All right. Thank you. This
19 witness is excused.

20 (Witness excused.)

21 **THE COURT:** Mr. Wise.

22 **MR. WISE:** United States calls Herbert Tate.

23 **THE COURT:** Okay.

24 **THE CLERK:** Please raise your right hand.

25 HERBERT TATE, GOVERNMENT'S WITNESS, SWORN.

1 mic and it will be able to pick you up.

2 **A.** (Witness complies.)

3 **Q.** Thanks.

4 What do you do for a living, Mr. Tate?

5 **A.** HVAC.

6 **Q.** What does HVAC stand for?

7 **A.** Heating, air conditioning, and ventilation.

8 **Q.** And how long have you worked in HVAC?

9 **A.** 21 years.

10 **Q.** What kind of training or education do you have in that
11 area?

12 **A.** I have my master HVAC license, and I have my journeyman's.

13 **Q.** And where do you work doing HVAC work?

14 **A.** Now I work for a realty company.

15 **Q.** How long have you worked for that realty company?

16 **A.** A year and three months.

17 **Q.** And what did you do before that?

18 **A.** The same thing.

19 **Q.** Different company, though?

20 **A.** Yes.

21 **Q.** Okay. How far did you go in school? You mentioned your
22 professional certifications, but how far did you go in school?

23 **A.** I have a high school diploma and some college.

24 **Q.** Now, I'm going to be asking you some questions, Mr. Tate,
25 about November the 27th of 2015; okay?

~~PAGE DIRECT~~

1 A. Okay.

2 Q. And do you remember what happened on that day?

3 A. Yes.

4 Q. And have you previously testified about what happened on
5 that day in the grand jury that investigated this case?

6 A. Yes.

7 Q. And to be clear, at the time of your grand jury testimony,
8 did you have what's referred to as immunity?

9 A. Yes.

10 Q. And do you have immunity today?

11 A. Yes.

12 Q. And tell the members of the jury what you understand that
13 to mean.

14 A. Speaking on the case that happened, I can't get in no more
15 trouble than what I had got in.

16 Q. And what's your -- what obligations do you have? What do
17 you need to do?

18 A. To tell the truth.

19 Q. And what happens if you don't tell the truth?

20 A. I can go to jail for an offense that has nothing to do
21 with what I had immunity for.

22 Q. Right. And for perjury?

23 A. Right.

24 Q. Now, at the time of your grand jury testimony, were you
25 facing any charges for what happened on November the 27th of

1 2015?

2 **A.** No.

3 **Q.** Had the case against you been dismissed before that?

4 **A.** Yes.

5 **Q.** And are you facing any charges for what happened on
6 November the 27th of 2015 today?

7 **A.** No.

8 **Q.** And was that a state case or a federal case?

9 **A.** State.

10 **Q.** How long before you testified in the grand jury had that
11 case been dismissed?

12 **A.** It was March, I believe, of 2015.

13 **Q.** All right.

14 **A.** I believe.

15 **Q.** Was it March of 2016?

16 **A.** '16, yeah, '16.

17 **Q.** That's when it was dismissed?

18 **A.** Right.

19 **Q.** And it was dismissed by the Baltimore City State's
20 Attorney's Office?

21 **A.** Yes.

22 **Q.** Did you come to the FBI in this case, or did they come to
23 you?

24 **A.** They sought me out.

25 **Q.** Do you know how they found you, how they knew to come and

1 talk to you?

2 **A.** From the conversation I was having on the phone.

3 **Q.** And what conversation was that that you were having on the
4 phone?

5 **A.** Explaining to my fiancée what I had got in trouble -- what
6 I had got locked up for and what happened that day, on the
7 27th.

8 **Q.** And when did you -- where were you when you explained that
9 to your fiancée?

10 **A.** In Central Booking.

11 **Q.** And was this a recorded call?

12 **A.** Yes.

13 **Q.** And did you later learn that the FBI had heard that call
14 and then they came to ask you about what you said?

15 **A.** Yes.

16 **Q.** Okay. Now, my questions are really all going to be about
17 November 27th, 2015, Mr. Tate, so why don't you start by
18 telling the jury what you were doing that day.

19 **A.** I recall walking up the street, and a patrol car was
20 coming behind me with Officer Hersl and two of his co-workers.
21 And he told one of the co-workers, "Jump out," and they grabbed
22 me.

23 **Q.** And I'll just interrupt you for a second.

24 I want to show you a couple of exhibits. The first one is
25 HT-8. Is this a map that shows where you were on

1 November 27th?

2 **A.** Yes.

3 **Q.** So this is -- you were on Robb Street?

4 **A.** Yes.

5 **Q.** Okay. And where -- that screen you can actually touch it,
6 and it will make a little arrow or a mark.

7 Where were you walking when you said Officer Hersl and two
8 other officers, I guess, came up on you?

9 **A.** About right -- about right there (indicating).

10 **Q.** Where that little --

11 **A.** Pink dot.

12 **Q.** Pink dot. Okay. Could you make it slightly bigger just
13 so we can see where you're --

14 **A.** (Witness complies.)

15 **Q.** All right. And which way were you walking?

16 **A.** Northbound.

17 **Q.** All right. So you were headed in that direction
18 (indicating)?

19 **A.** Yes.

20 **Q.** And you said they -- from what direction did they come,
21 did Officer Hersl and the other two officers come?

22 **A.** From my rear, from the -- from my rear.

23 **Q.** From your rear?

24 **A.** Yes.

25 **Q.** Okay. And did you see them coming or were they -- did

1 they come from behind?

2 **A.** From behind me, from behind me.

3 **Q.** Okay. And what kind of street is Robb Street?

4 **A.** What do you mean?

5 **Q.** Is it a one-way street or a two-way street?

6 **A.** Oh. It's a two-way street -- I mean it's a one-way
7 street, but traffic can go in and out.

8 **Q.** I see. And does it dead-end up here (indicating)?

9 **A.** Yes.

10 **Q.** All right. And I'm going to ask you some specific
11 questions about once they stop you, but why were you on
12 Robb Street on November 27th of 2015?

13 **A.** Just hanging out around the holiday time. Around the
14 holiday time, just hanging out.

15 **Q.** Had you finished work for the day?

16 **A.** Yes.

17 **Q.** What time of day was this?

18 **A.** This was close to 5 o'clock and I got off about 3 o'clock
19 that day.

20 **Q.** What kind of work as an HVAC -- did you say an HVAC
21 engineer or how do you refer to yourself?

22 **A.** Technician.

23 **Q.** Technician. So as an HVAC technician, do you work a shift
24 or what kind of work -- how does your work schedule?

25 **A.** It can be a shift or you can just have general work order

1 tickets that day for service calls.

2 Q. What were you doing on November 27th?

3 A. I had service calls, so it wasn't a complete shift.

4 Q. So you said by about 3 o'clock, were you finished with
5 your service calls?

6 A. Yes.

7 Q. Did you grow up in this neighborhood?

8 A. Yes.

9 Q. And what were your connect -- did you live in this
10 neighborhood in November of 2015?

11 A. No.

12 Q. So what were your connections to this neighborhood in
13 November of 2015? What brought you there?

14 A. Just to hang out with some old friends, see some old
15 people from the neighborhood, some of the kids that I was
16 coaching basketball with at the recreation center around the
17 neighborhood.

18 Q. So did you coach basketball at a neighborhood recreation
19 center?

20 A. Yes.

21 Q. And did some of those kids live in this neighborhood?

22 A. Yes.

23 Q. And then you -- I think you said some of your friends from
24 growing up there still live there; right?

25 A. Right.

1 Q. Okay. And now you started to say -- you started to
2 describe how as you were walking north on Robb Street,
3 Officer Hersl and two other officers, you said, pulled up on
4 you?

5 A. Yes -- well, pulled up and stopped right where I was at
6 and jumped out.

7 Q. And do you see Officer Hersl in the courtroom?

8 A. Vaguely. Second from the end of the table over there.

9 MR. PURPURA: We'll stipulate that Mr. Hersl is
10 sitting next to counsel.

11 THE COURT: Thank you.

12 BY MR. WISE:

13 Q. And, again, what were you doing when they pulled up?

14 A. I just stopped.

15 Q. Okay.

16 A. I was just walking.

17 Q. All right.

18 A. And I stopped once they started to get out.

19 Q. And then you started to say that Officer Hersl told one of
20 the other officers to grab you?

21 A. Yes; Officer Fassl.

22 Q. And did he?

23 A. Yeah. He got out the backseat, and I just stopped. And
24 he grabbed me and started searching me.

25 Q. And did he find anything on you?

1 **A.** Just money, pay stubs, and some receipts from some bills I
2 had paid.

3 **Q.** Now, when he -- when he was searching you, did you give
4 him consent to search you? Did he -- did you say, "You can
5 search me"?

6 **A.** No.

7 **Q.** Why did you stop?

8 **A.** Because they jumped out aggressive. I mean, they known
9 for being aggressive, so I ain't want to get in no trouble or
10 get beat up. So it was just stop. I wasn't in the wrong or
11 doing nothin'.

12 **Q.** Okay. And you just said you weren't in the wrong; you
13 weren't doing nothin'. Had you been doing any -- had you been
14 selling drugs before that?

15 **A.** Naw. I had work clothes on, like.

16 **Q.** Okay. Did Officer Fassl find any drugs on you?

17 **A.** No.

18 **Q.** How were they dressed, if you remember?

19 **A.** I'm not -- I know they had on like vests and, like,
20 regular clothes, plainclothes with like vests.

21 **Q.** Okay.

22 **A.** Vests on.

23 **Q.** So you knew they were police by the vests?

24 **A.** I knew they were police by who they -- the voices I heard
25 and seeing how they was dressed when I got out -- when they got

1 out.

2 Q. Okay. Had you -- had you dealt with Officer Hersl before?

3 A. A couple days before that, we had a little incident, but
4 it wasn't as "extenuous" as this one was.

5 Q. What was the incident with Officer Hersl a couple days
6 before?

7 A. Something similar, but it just -- they stopped me. He was
8 walking up and down the street looking for stuff. The other
9 officer, Fassl, was talking to me. He basically said -- wrote
10 down on the piece of paper, "This your warning. Next time I
11 see you, you're going to jail."

12 Q. Who said that to you?

13 A. Hersl.

14 Q. He said, "Next time I see you, you're going to jail"?

15 A. Yes.

16 Q. Were you doing anything that day?

17 A. No, I wasn't.

18 Q. Anything illegal?

19 A. No. This incident lasted every bit of about five, six
20 minutes.

21 Q. And you said this was just a couple of days before the
22 27th?

23 A. Yes.

24 Q. Were you searched when Officer Hersl stopped you a couple
25 days before the 27th?

1 **A.** Yeah. He searched me, told me, "Sit down." He told Fassl
2 to tell me take -- well, one of them told me to take my shoes
3 off. Took my shoes off.

4 After that I stood back up. He, like, unbuttoned the
5 front of my pants, looked around my waistline, looked around my
6 pants, and just told me go ahead about my business once they
7 ain't find nothing that time.

8 **Q.** Did he go in your mouth?

9 **A.** Yeah. He grabbed my mouth (indicating), opened my mouth,
10 told me put my tongue out.

11 **Q.** And if I didn't ask you this already, did Officer Hersl
12 find anything after he went in your mouth, went down your
13 pants?

14 **A.** No.

15 **Q.** And where did all this happen? Where was this happening?

16 **A.** This first incident happened in the same block, about
17 right here (indicating).

18 **Q.** Okay. But out on the street?

19 **A.** Yes.

20 **Q.** Okay. And I think you testified that at the end of it,
21 you said he wrote something down on a piece of paper?

22 **A.** Yeah. Like, "This is your warning," like a warning piece
23 of paper.

24 **Q.** All right. Warning for what?

25 **A.** I don't know. I really wasn't even really paying him no

1 attention.

2 Q. Okay.

3 A. But it was the day's date on the white piece of paper.

4 Q. And he said if he saw you again, he was going to lock you
5 up?

6 A. Right.

7 Q. All right. And then moving ahead to two days or a couple
8 days later, to the 27th, after Officer Fassl searched you, you
9 said he found -- you had some money on you; right?

10 A. Yes.

11 Q. And a pay stub?

12 A. Money, pay stub, a receipt from a daycare bill, and it was
13 probably another miscellaneous food receipt or something like
14 that.

15 Q. Did you have a child in daycare?

16 A. Two.

17 Q. Two. Were you paying -- were you paying for the daycare?

18 A. Yes.

19 Q. Now, where -- how much money did you have? You said you
20 had -- that you had money in your pocket that Officer Fassl
21 took. How much money did you have?

22 A. The second time I had about 530-something dollars and some
23 change, I believe.

24 Q. And where had that money come from?

25 A. My paycheck.

~~PAGE DIRECT~~

1 Q. And how much before the 27th had you gotten paid?

2 A. It was \$1,163 and some cents.

3 Q. And for how long -- do you get paid every --

4 A. Biweekly.

5 Q. Biweekly, so every two weeks?

6 A. Yes.

7 Q. So that was your biweekly paycheck, \$1,163?

8 A. Yes.

9 Q. And when had you gotten paid?

10 A. That day.

11 Q. Okay.

12 A. Friday.

13 Q. Friday?

14 A. Yes.

15 Q. And what had you done with the paycheck?

16 A. Paid a bill, got some food, got some gas. Just about it.

17 Nothin' --

18 Q. What was the bill you paid?

19 A. Daycare, I believe.

20 Q. Okay. So that was the receipt you mentioned you might
21 have had?

22 A. Right.

23 Q. And then what were you going to -- and you said after
24 those expenses from the \$1,163, you had about \$530 left in your
25 pocket?

1 **A.** And some change, some cents.

2 **Q.** And some change.

3 And what were you going to do with that money?

4 **A.** I was just -- so the rest of it for bills and to get
5 through the week, get through the next two weeks.

6 **Q.** Okay. Had you paid your rent yet?

7 **A.** No. That was coming up. I had to pay it before the 5th,
8 so that was a portion towards it. Some of that was a portion
9 towards the rent.

10 **Q.** All right. Now, did Officer Fassl put handcuffs on you
11 before he searched you, or did he search you without handcuffs
12 on?

13 **A.** The initial pat-down I didn't have cuffs on; but probably
14 a few minutes later, once they told me sit down, I had some
15 cuffs.

16 **Q.** Who told you to sit down?

17 **A.** I believe it was Burns told him to "sit him down" and
18 watch me. They sat me on some steps.

19 **Q.** And that's -- so you've now -- those are -- is he the
20 third officer? You mentioned it was Hersl and two other
21 officers, and you've now mentioned Fassl and Burns. Are those
22 the two other officers?

23 **A.** Correct.

24 **Q.** Who put the handcuffs on you?

25 **A.** I believe Officer Fassl.

1 Q. And then you said they told you to sit down?

2 A. Right.

3 Q. I know you have handcuffs on, so this may seem like a dumb
4 question; but did you feel like you could leave at this point?

5 A. No.

6 Q. What did you think would happen if you had resisted or
7 tried to leave?

8 A. I'm not even sure. No telling.

9 Q. Were you fearful?

10 A. Yeah. I just knew I wasn't going to just try to walk
11 away.

12 Q. Right.

13 A. That wouldn't happen.

14 Q. Now, once you were in cuffs and you said they told you to
15 sit down -- did they tell you to sit down on the curb or sit
16 down on the stoop or something?

17 A. Right.

18 Q. What did Defendant Hersl do then?

19 A. Well, he wasn't, like, there. He -- once he got out the
20 car, he just went and started looking for stuff, I guess, like
21 vacant homes.

22 Q. What did you see him doing?

23 A. Go into vacant homes, looking into steps, pulling steps
24 apart, stuff like that. I mean, those things and walking up --
25 back up and down the street.

1 Q. Did you know what he was looking for?

2 A. Not at the moment.

3 Q. And you testified that they hadn't found anything on you;
4 right?

5 A. No.

6 Q. Where did -- you said Defendant Hersl started looking in
7 the steps and in vacant homes. Did he ultimately go somewhere
8 on Robb Street?

9 A. Yeah. He went, like, up to the top of that dead-end into
10 the alley, to the right.

11 Q. So the alley sort of over here (indicating)?

12 A. Yes.

13 Q. And then was he out of sight? You couldn't see him
14 anymore?

15 A. Right.

16 Q. How long was he up in that alley?

17 A. I know it's dark when he came back down, probably about
18 seven to ten minutes.

19 Q. Okay.

20 A. Maybe.

21 Q. And did he have anything in his hands when he came out of
22 the alley?

23 A. No.

24 Q. So as of the time he came back, did you know why you had
25 been arrested?

1 A. I ain't know nothin' at that time.

2 Q. Did anyone tell you?

3 A. Officer Fassl was just like, "Man, just be cool. Just be
4 quiet."

5 Q. How did he treat you? Did he treat you --

6 A. Cool, respect.

7 Q. All right. Did you ask what you were being arrested for?

8 A. I asked a couple times, but no one said nothin' --

9 Q. Did you ever --

10 A. -- at the moment.

11 Q. Did you ask Officer Hersl when he came back out of the
12 alley?

13 A. I don't remember saying nothin' to him. I was talking to
14 Fassl for the first few minutes, and then I said something to
15 Burns. And I think maybe five minutes before I left, I was
16 talking to Officer Hersl. And I asked him what he was lock --
17 what they was locking me up for.

18 I think -- I believe it was Burns that said, "Blue and
19 whites."

20 I asked, "What are those?" And I was like -- I asked -- I
21 know I asked, "Could I see it?"

22 And Officer Hersl stated, "I don't have to show you an
23 MF'ing thing. We just got to prove it in court."

24 Q. So you asked if you could see the blue and whites that
25 they said they had, and Officer Hersl said he doesn't have to

1 show you an MF'ing thing?

2 A. Correct.

3 Q. Do you know what blue and whites are?

4 A. I mean, now I know what they was. It was heroin.

5 Q. Did you know at the time?

6 A. No.

7 Q. Did you ever sell heroin?

8 A. No.

9 Q. When you were on the street walking when they pulled up on
10 you, did you have anything in your hand?

11 A. A cup.

12 Q. A cup?

13 A. Yes.

14 Q. What was in the cup?

15 A. Wine maybe, beer, something.

16 Q. Okay. Did you have a bag in your hand?

17 A. No.

18 Q. Before they pulled up on you, you said you were heading
19 north; right?

20 A. Right.

21 Q. And ultimately did you -- did you see your -- the charging
22 papers in this case?

23 A. Once I was arrested, they gave 'em to me at
24 Central Booking. Yes, I did.

25 Q. And what did the -- I guess what did Officer Hersl claim

1 to have seen you -- or where did he claim to have seen you
2 coming from?

3 **A.** Up to the retain -- he said he seen me coming from the
4 retaining wall, placing a black bag or a white bag, I believe,
5 behind the wall somewhere.

6 **Q.** Did you do any of that?

7 **A.** I wasn't nowhere near that wall.

8 **Q.** 'Cause the wall's up here (indicating); right?

9 **A.** Right.

10 **Q.** And they grabbed you when you were here (indicating);
11 right?

12 **A.** Right.

13 **Q.** And I guess Robb Street has this sort of bend in the road;
14 right?

15 **A.** Correct.

16 **Q.** And so if we look at HT-7, here's a picture. Is this the
17 sort of head of Robb Street?

18 **A.** When you turning in, yes.

19 **Q.** So this is sort of down here (indicating)?

20 **A.** Right.

21 **Q.** And so what happens to the road fairly quickly?

22 **A.** Sharp right turn.

23 **Q.** Right. And have you walked on -- have you been on
24 Robb Street many times?

25 **A.** Yes.

1 Q. Can you see that retaining wall when you turn onto
2 Robb Street?

3 A. Once you make that right turn, you can.

4 Q. But what about when you're -- when you turn onto it?

5 A. No.

6 Q. Okay. Now, you testified that Hersl came back from the
7 alley. You asked him what you were being charged with. He
8 made the statement you just told us about.

9 At some point did a transport van show up to take you
10 either to the District or Central Booking?

11 A. Yes.

12 Q. And at that point where was your money? Where was the
13 money that had been taken out of your pocket?

14 A. In Officer Fassl's hand.

15 Q. And what did Officer Fassl do with that money?

16 A. He asked Hersl, What -- "What am I doing with the money?"
17 And he told him to keep it.

18 Q. So Hersl told Fassl to keep it?

19 A. Right.

20 Q. Did you see if Fassl gave it to Hersl?

21 A. No.

22 Q. All right. So the last you saw it, it was with Fassl?

23 A. Right.

24 Q. Okay. Did you say anything about your money?

25 A. Yeah, I did. I asked, "What's going to happen with my

1 money?" And I asked can they at least count my money.

2 And once I said that, Officer Burns, I guess it ticked
3 something in him and he got a little bit belligerent on me
4 making that statement.

5 Q. And what did he say?

6 A. "Nobody's going to take your f'ing money. I make a
7 hundred-and-something-odd-thousand dollars a year. I don't
8 need your f'ing money."

9 Q. Why did you ask -- why did you ask them to count it?

10 A. 'Cause I wanted to know what was going in my property, and
11 officers are known for stealing.

12 Q. Okay. Did they count it?

13 A. Not in front of me.

14 Q. You testified that you saw your charge papers at some
15 point. Was there any money listed on your charge papers?

16 A. \$216 and I think some cents.

17 Q. And was that what had been taken from you?

18 A. That wasn't what I had in my pocket.

19 Q. And what had been taken from you out of your pocket?

20 A. 530-something dollars and some change.

21 Q. And when you were released, were you given back -- well,
22 were you given back the difference between the \$530 the 216?

23 A. No. I was released -- I think I had 37 cents in my pocket
24 they released me with.

25 Q. So I'm going to show you what's been marked HT-2. This

1 says, "Personal Property Receipt, Herbert Tate"; right?

2 **A.** Yes.

3 **Q.** And that's a picture of you at the time (indicating)?

4 **A.** Right.

5 **Q.** And it says that cash property, you were given about
6 91 cents.

7 **A.** Yes.

8 **Q.** Right?

9 **A.** Right.

10 **Q.** Okay. So do you know what happened to the money, the
11 difference between the 530 that was taken from you and the 216
12 that was at least reported to have been turned in to the
13 Evidence Control Unit?

14 **A.** Not at all.

15 **Q.** Did you ever get that back?

16 **A.** No.

17 **Q.** You testified your state case was dismissed; right?

18 **A.** Yes.

19 **Q.** Did you ever get your \$216 back?

20 **A.** No.

21 **MR. WISE:** Nothing further.

22 **THE COURT:** All right. Thank you.

23 We'll take the mid-afternoon recess and then continue.

24 (Jury left the courtroom at 3:28 p.m.)

25 (Recess taken.)

1 **THE COURT:** Be seated, please.

2 Can I see counsel at the bench for just a minute.

3 (Bench conference on the record:

4 **THE COURT:** Another question from a different juror.

5 "Were Burns, Fassl, and Hersl armed when they stopped
6 and arrested Herbert Tate?"

7 I assume that question can be answered in the course
8 of the testimony.

9 **MR. WISE:** Yes.)

10 (Bench conference concluded.)

11 **THE COURT:** All right. We'll get the jury.

12 (Jury entered the courtroom at 3:47 p.m.)

13 **THE COURT:** You can all be seated.

14 **THE CLERK:** Mr. Tate, you're still under oath.

15 **THE COURT:** Mr. Rafter.

16 **MR. RAFTER:** Thank you, Your Honor.

17 CROSS-EXAMINATION

18 **BY MR. RAFTER:**

19 **Q.** Good afternoon, Mr. Tate.

20 **A.** Good afternoon.

21 **Q.** I have a few questions for you. I'll be pretty brief, but
22 I do have a few questions.

23 You grew up in this neighborhood, right, around
24 Robb Street?

25 **A.** Yes.

~~TATE~~ ~~CROSS~~

1 Q. So you're familiar with Robb Street?

2 A. Right.

3 Q. Okay. I'm going to show you what's already been
4 introduced as Government's HT-8.

5 And you recognize that area; correct?

6 A. Correct.

7 Q. Okay. And I guess you testified, without pointing out,
8 you're about halfway down the block when you encountered the
9 police; correct?

10 A. Yes.

11 Q. Okay. Now, this is a dead-end street; correct?

12 A. Correct.

13 Q. And there's a wall at the end of the street?

14 A. Correct.

15 Q. Okay. And you're familiar with that area?

16 A. Correct.

17 **MR. RAFTER:** Your Honor, if I may approach the
18 witness.

19 **BY MR. RAFTER:**

20 Q. I want to show you a few photographs and ask you -- 14,
21 15, and 16 from Hersl, ask you if you can identify those.

22 **THE CLERK:** Mr. Rafter, is your microphone on?

23 **THE WITNESS:** You talking about all of 'em?

24 **BY MR. RAFTER:**

25 Q. Yeah; just all those three.

~~STATE~~ ~~CROSS~~

1 **A.** Yes, I do.

2 **Q.** Okay. And what street is that?

3 **A.** That's Robb Street.

4 **Q.** All three of them?

5 **A.** Yes.

6 **Q.** Okay. I'll show you what's been marked as State's 14 --

7 **MR. PURPURA:** Not "State."

8 **THE COURT:** No.

9 **BY MR. RAFTER:**

10 **Q.** Excuse me.

11 -- Hersl 14.

12 And what is that? Is that the east side of the street?

13 **A.** Yes.

14 **Q.** And that's the -- where you encountered Mr. Hersl?

15 **A.** On that side of the street, yes.

16 **Q.** Okay. About how far down? Which house were you in front
17 of?

18 **A.** None of these houses right here (indicating).

19 **Q.** Okay. So further down the block, is that what you're
20 saying?

21 **A.** Yes.

22 **Q.** Okay. And the wall is up top; correct?

23 **A.** Correct.

24 **Q.** That's the dead-end area?

25 **A.** Yes.

~~TATE~~ ~~CROSS~~

1 Q. Okay. And 15. Now, that's the end of Robb Street;
2 correct?

3 A. On the left side, yes.

4 Q. Okay. That's -- that's gonna be the west side of the
5 street; right?

6 A. Facing the west side.

7 Q. So that's the opposite side of the street from where you
8 encountered the police?

9 A. Correct.

10 Q. And, in fact, there's a pathway that leads to the other
11 block; correct?

12 A. Correct.

13 Q. Okay. So if somebody was up there, they can cut to the
14 next street, go into the west side of the street?

15 A. Yes.

16 Q. Okay. And I will show you Number 16 from Hersl. And
17 that's the top of the street as well; right?

18 A. Right.

19 Q. And the wall's in that scraggly brush there, things like
20 that?

21 A. Yes.

22 Q. Is there a wall there?

23 And on the east side of the street, there's like a
24 cut-through; correct?

25 A. Yes.

~~TATE~~ ~~CROSS~~

1 Q. Like a cut, so that cuts away to another block as well?

2 A. Yes.

3 Q. So if somebody was up at the top of this street, they
4 could basically leave Robb Street real quick by going either to
5 the east side or the west side through the cut; right?

6 A. Correct.

7 Q. And you lived in that area; correct?

8 A. Yes. Not on Robb Street, no.

9 Q. Okay. But you know Robb Street basically is an open-air
10 drug market?

11 A. That's what they say.

12 Q. Okay. And it is; correct?

13 A. I don't know.

14 Q. You grew up there.

15 A. Right. I never seen no one selling drugs myself.

16 Q. Have you ever sold -- you said -- the prosecutor asked you
17 if you had never sold heroin; is that correct?

18 A. Correct.

19 Q. Have you ever sold cocaine or marijuana?

20 A. Yes.

21 Q. Okay. When was that?

22 A. When I was in, like, high school, maybe.

23 Q. Okay. How about in 2003?

24 A. No.

25 Q. You were never convicted of drug distribution?

~~TATE~~ ~~CROSS~~

1 A. I took PBJ for it. Yes, I did.

2 Q. Okay. That was back in 2003?

3 A. Correct.

4 Q. And that was a felony conviction?

5 A. PBJ.

6 Q. Right. But it was a felony count; correct?

7 A. I guess.

8 Q. Okay. So you have dealt drugs before?

9 A. Yes.

10 THE CLERK: Sir, can you slide up, please. Thank you.

11 BY MR. RAFTER:

12 Q. Now, Mr. Tate, let's go through this. The first time you
13 talked to the Government lawyers was December 19th; correct?

14 A. Correct.

15 Q. And that was at your house?

16 A. Yes.

17 Q. And the FBI came to see you?

18 A. Yes.

19 Q. Task Force Agent Sieracki (indicating)?

20 A. Yes.

21 Q. Okay. And I guess it was task force agent Smith as well;
22 right?

23 A. Correct.

24 Q. And they interviewed you about this?

25 A. Yes.

~~TATE~~ ~~CROSS~~

1 Q. And then the next time you met with the entire Government
2 team, isn't that correct, the two prosecutors (indicating),
3 when you came back here in January; right?

4 A. When you refer to the entire team, that's --

5 Q. Prosecution.

6 A. -- three people. I met with three people the last time --

7 Q. Who did you meet with?

8 A. -- I believe.

9 The gentleman --

10 Q. Mr. Wise (indicating)?

11 A. Yes.

12 THE COURT: Wait. Again, please --

13 MR. RAFTER: I'm sorry, Your Honor.

14 THE COURT: -- wait until he finishes.

15 BY MR. RAFTER:

16 Q. Did you meet with Mr. Wise (indicating)?

17 A. Yes.

18 Q. Mr. Hines (indicating)?

19 A. Yes.

20 Q. Okay. FBI agent (indicating)?

21 A. No.

22 Q. Okay.

23 A. She just was in transportation, maybe. I seen her face
24 before.

25 Q. All right. But you met with them before you went to the

1 grand jury; correct?

2 **A.** Yes.

3 **Q.** And you went over your story with them; right?

4 **A.** Yes.

5 **Q.** And then you went and testified before the grand jury that
6 same day?

7 **A.** Right.

8 **Q.** Okay. Now, this is a pretty traumatic incident to you;
9 correct?

10 **A.** Yes.

11 **Q.** Okay. 'Cause you're basically saying that you're an
12 innocent guy and just got basically locked up for no reason;
13 correct?

14 **A.** Correct.

15 **Q.** You got a pretty good memory of what happened that day?

16 **A.** Right.

17 **Q.** Okay. So that when you testified that -- Hersl saw you
18 two days before; correct?

19 **A.** Correct.

20 **Q.** Basically, just sort of searched you, shook you down,
21 didn't find anything, gave you a paper, and then said, "If I
22 find you again, I'm going to lock you up"; correct?

23 **A.** Correct.

24 **Q.** Okay. And -- now, when you were interviewed back on -- do
25 you recall that when you were interviewed by Task Force

~~TATE~~ ~~CROSS~~

1 Agent Sieracki (indicating) back in December?

2 **A.** Yes.

3 **Q.** Okay. Back in December you basically said that Tate
4 stopped the vehicle and removed -- excuse me, Hersl stopped the
5 vehicle and removed approximately \$600 and a pay stub from you.

6 Now, that's not what you testified to; correct?

7 **A.** Which time are you referring to?

8 **Q.** This is the -- before you got arrested.

9 **A.** Yes.

10 **Q.** I'm going chronologically.

11 **A.** Okay.

12 **Q.** In order, basically.

13 **A.** Yeah.

14 **Q.** So the first time -- you testified here that they didn't
15 find anything. That's what you said on the stand. They just
16 shook you down and gave you this piece of paper and said,
17 "Don't come back"; correct?

18 **A.** Correct.

19 **Q.** Okay. But you didn't tell that to the head task force
20 agent, did you?

21 **A.** I don't recall.

22 **Q.** Okay. Let me see if I can refresh your recollection.

23 I'm going to show you what's been -- what will be marked
24 as Hersl 17 and ask if you can just read through that
25 (handing).

~~TATE~~ ~~CROSS~~

1 **THE COURT:** And that's for identification?

2 **MR. RAFTER:** Yes, Your Honor.

3 **BY MR. RAFTER:**

4 **Q.** I'm going to direct your attention to this paragraph down
5 here.

6 **A.** I want to read all of it.

7 **Q.** Do you recognize that, Mr. Tate?

8 **A.** Yes.

9 **Q.** Okay. And is that your interview, the notes of your
10 interview on that date?

11 **A.** Yes.

12 **Q.** Okay. And it says -- I'm directing you to the third
13 paragraph.

14 **MR. WISE:** Your Honor, we object.

15 **THE WITNESS:** I wasn't finished reading.

16 **THE COURT:** Do you want to come up to the bench,
17 please.

18 **MR. WISE:** Yes.

19 (Bench conference on the record:

20 **MR. WISE:** What he's showing him is the FBI 302 from
21 his interview. He's never seen it before. He's now starting
22 to read to it -- to read to him from it. It's not a proper use
23 of it.

24 He can use it to refresh his memory if he claims to
25 forget something. He can ask him, "Did you tell the FBI X?"

~~TATE~~ ~~CROSS~~

1 Did you tell them Y?" But he can't now read this FBI report
2 that he's never seen before into the record.

3 **MR. RAFTER:** I was trying to direct him to the third
4 paragraph where my questions were, Your Honor.

5 **THE COURT:** Sure. And if there's something in the
6 third paragraph that you now want to ask him about, you can ask
7 him whether, in reading that 302, you know, that -- those notes
8 from the FBI, does that refresh your recollection as to what
9 you said during the interview? Did you say X?

10 And that's fine. But I will sustain the objection as
11 far as reading the report into evidence.)

12 (Bench conference concluded.)

13 **THE COURT:** So we'll just rephrase that.

14 **MR. RAFTER:** Thank you, Your Honor.

15 **BY MR. RAFTER:**

16 **Q.** Have you had an opportunity to read that?

17 **A.** Yes.

18 **Q.** Okay. When you spoke to Task Force Agent Sieracki, did
19 you tell him that you had \$600 taken by Hersl?

20 **A.** Not -- not the first time, not the first incident; he did
21 not -- they didn't take nothin' from me. They put -- looked at
22 my stub, gave me my money, and sent me on my way the first
23 time.

24 **Q.** Okay. But he -- third paragraph, does that refresh your
25 recollection?

~~TATE~~ ~~CROSS~~

1 **MR. WISE:** Your Honor, objection. He said that's not
2 what he said. His memory isn't in need of refreshment.

3 **THE COURT:** Okay.

4 **BY MR. RAFTER:**

5 **Q.** Do you recall telling Task Force Sieracki [sic] about what
6 happened the first time?

7 **MR. WISE:** Asked and answered, Your Honor.

8 **THE COURT:** All right. Overruled. One more time.

9 **THE WITNESS:** Say it again.

10 **BY MR. RAFTER:**

11 **Q.** Do you remember telling the task force agent what happened
12 the first time you came in contact with Hersl?

13 **A.** Yeah. I remember -- remember some -- telling him some
14 things. I probably told him -- when more things got to my
15 mind, I told him that also.

16 **Q.** Okay. And didn't you tell him that you had money on you
17 and a pay stub?

18 **A.** I said I had money and a pay stub in my -- from my wallet,
19 yes, on me; correct.

20 **Q.** And that the detective gave that back to you; correct?

21 **A.** Yeah. They put it back that time, the first time.

22 **Q.** Okay. That was the first time.

23 **A.** Right.

24 **Q.** Okay. But you didn't testify to that today?

25 **A.** Okay.

1 Q. True?

2 A. I wasn't asked about that.

3 MR. WISE: He did testify to that.

4 THE COURT: The jury's recollection will control.

5 Next question.

6 MR. RAFTER: Thank you, Your Honor.

7 BY MR. RAFTER:

8 Q. Do you recall at that point in time when you were talking
9 with Task Force Agent Sieracki going into what happened on the
10 27th of November?

11 A. Yes, yes.

12 Q. Okay. And you explained to him that you were seated on
13 the porch of a vacant home; is that correct?

14 A. At -- initially, I was not on the step. That was -- they
15 had me standing like where the car pulled out at. In between
16 two cars I was standing. And then they told me to sit at the
17 bottom of the steps.

18 Q. Okay. But that's not what you told the agent, is it?

19 A. That's what happened, what I just told you.

20 Q. Okay. I'm just asking what you told the agent on the
21 first day.

22 A. I'm telling you what just happened -- what I just told you
23 is just what happened.

24 Q. Okay. That's fine. But I'm asking you what you told the
25 agent. Do you recall --

~~TATE~~ ~~CROSS~~

1 **A.** I don't recall.

2 **Q.** You don't recall that. Okay.

3 **A.** Right.

4 **Q.** Can you look at the last paragraph and see if that
5 refreshes your recollection.

6 **A.** (Reviews document.)

7 Yeah. That's --

8 **Q.** Does that help your memory?

9 **A.** Yeah.

10 **Q.** In fact, you told the agent you were sitting --

11 **MR. WISE:** Objection, Your Honor. He has to now ask
12 if he remembers.

13 **THE COURT:** Well, let him finish his question.

14 **BY MR. RAFTER:**

15 **Q.** Does that help your recollection?

16 **A.** Yes.

17 **Q.** Okay. Didn't you tell the agent that you were sitting on
18 the steps?

19 **A.** I told you that they told me to sit at the bottom of a
20 step. After he searched me, he put me on the bottom of a
21 step --

22 **Q.** Okay.

23 **A.** -- the bottom step of the steps.

24 **Q.** Okay. But that doesn't -- okay. You didn't tell the
25 agent that day, did you?

1 **A.** I don't -- I'm telling you what happened.

2 **Q.** I know, but you didn't tell the agent that on that date;
3 correct?

4 **A.** I'm telling you what happened that day.

5 **THE COURT:** I guess that you're not going to get
6 that --

7 **MR. RAFTER:** I get the idea. That's fine.

8 **BY MR. RAFTER:**

9 **Q.** Now, going further with what you told the task force agent
10 about what happened when you got arrested, do you remember
11 telling the task force agent who got out of the car to sort of
12 shake you down?

13 **A.** Which time, the 27th?

14 **Q.** The 27th.

15 **A.** Yes.

16 **Q.** And this is the interview with (indicating)?

17 **A.** Yes.

18 **Q.** Okay. And what did you tell the agent?

19 **A.** Hersl told Fassl, "Grab him." He searched me, said
20 something about your ass going to jail. He started going to
21 break up steps at vacant homes, trying to get into vacant
22 homes, looking for things, being loud and belligerent, going up
23 the street.

24 **Q.** Okay. And so that's what you told the agent back in
25 December?

~~TATE~~ ~~CROSS~~

1 **A.** Right.

2 **Q.** Okay. I'm going to ask you to turn to Page 2.

3 Are you on Page 2?

4 **A.** Yes.

5 **Q.** Okay. Can you just read that quickly.

6 **THE COURT:** To yourself. To yourself.

7 **BY MR. RAFTER:**

8 **Q.** To yourself.

9 **A.** (Witness complies.)

10 **Q.** Have you read that? It's just about the initial
11 confrontation with the police?

12 **A.** I'm done.

13 **Q.** Okay. In fact, didn't you tell Agent Sieracki -- does
14 that help your recollection?

15 **A.** I read it.

16 **Q.** Okay. Didn't you tell Agent Sieracki that Fassl didn't
17 come up to you but Hersl did?

18 **A.** No. Hersl was driving the car. He got out and
19 immediately started searching for things. Fassl got out and
20 started to contain me and search me.

21 He searched me. And then when he ain't find nothing,
22 Hersl came back down the street. They sat me back down on the
23 steps, and they were still looking for things.

24 **Q.** So you never told Agent Sieracki that Hersl came out and
25 grabbed you by the clothing and shook you down?

~~TATE~~ ~~CROSS~~

1 **A.** Hersl shook -- I mean Fassl shook me down.

2 **Q.** Did you tell the agent that Hersl --

3 **A.** I don't recall telling him that, but I remember Fassl
4 shook me down.

5 **Q.** Okay. So basically when -- do you recall telling
6 Agent Sieracki about visible injuries in your booking photo?

7 **A.** I mean, probably from like my shirt being grabbed like on
8 my neck --

9 **Q.** And that was when you --

10 **A.** -- and scratches.

11 **Q.** And that was when you said it was grabbed by Hersl;
12 correct?

13 **A.** I'm not sure.

14 **Q.** Okay. You're not sure. Does reading that --

15 **A.** I'm not sure if I said it was by Hersl.

16 **Q.** Okay. How about reading the report; does that help?

17 **A.** I'm reading. It's going to say the same thing.

18 **Q.** Up at the top?

19 **A.** Next question.

20 **Q.** No. You can answer my question.

21 **THE COURT:** All right. Well, which part do you want
22 him to read now?

23 **BY MR. RAFTER:**

24 **Q.** Just the top. You don't -- you don't recall telling
25 Agent Sieracki that Hersl's the one that got out of the car and

1 shook you by your work uniform; is that correct?

2 **A.** No. Fassl, I ain't -- I don't remember saying that. I
3 know Fassl the one grabbed me.

4 **Q.** Okay. All right. And do you recall telling
5 Agent Sieracki that you had basically bruises, visible bruises
6 on your booking photograph?

7 **A.** Yeah. If you can see my photo, you can see where I was
8 jacked up at. You seen scratches or like confrontational
9 marks.

10 **Q.** Okay. I'm going to show you what's HT-2, and that was
11 shown to you by Mr. Wise?

12 **A.** Yeah. That's not a good photo.

13 **Q.** And where are the injuries?

14 **A.** I mean, that's not a good photo. You can't even see it.

15 **Q.** Okay. Can you point out the injuries on that?

16 **A.** Like around the collar area of the -- up in that area.
17 You actually probably can see one of the dark spots right
18 there.

19 **Q.** Okay.

20 **A.** Circle that (indicating).

21 **Q.** And that's what Hersl gave you; correct? Is that what
22 you're saying now?

23 **A.** No, I didn't say that.

24 **MR. RAFTER:** Okay. Court's indulgence, Your Honor.

25 **BY MR. RAFTER:**

~~TATE~~ ~~CROSS~~

1 Q. You testified previously that I believe it was -- was it
2 Burns that said, when you asked about your money, "Does it look
3 like we want your money? I make over 100,000 a year"; correct?

4 A. Yes.

5 Q. And Burns said that?

6 A. Yes.

7 Q. Do you remember telling Agent Sieracki that Hersl said
8 that the first time?

9 A. No.

10 Q. Does the report refresh your recollection?

11 A. No, no.

12 Q. It doesn't?

13 A. No.

14 Q. So you don't recall that. All right.

15 A. I recall Burns saying -- making that statement.

16 Q. Now, as far as the money, let's go to the money that you
17 say got stolen from you. How much money did you have?

18 A. At that time I had like 530-something dollars and some
19 change.

20 Q. \$530; right?

21 A. Yes.

22 Q. Okay. And do you remember you had told Agent Sieracki
23 that you had two 100s and the rest were twenties and fives;
24 isn't that correct?

25 A. Right.

1 **Q.** Okay. So that -- I'm going to show you what's been marked
2 as Hersl 18.

3 **MR. WISE:** Your Honor, this is a document he's never
4 seen before. It's a Baltimore Police Department internal
5 document.

6 **THE COURT:** All right. Do you want to come up to the
7 bench if you have an objection.

8 (Bench conference on the record:

9 **MR. RAFTER:** I can just show him a picture of the
10 money.

11 **MR. WISE:** We'll withdraw the objection. That's fine.

12 **MR. RAFTER:** That's fine.)

13 (Bench conference concluded.)

14 **BY MR. RAFTER:**

15 **Q.** I'm going to show you what is Hersl 18. And that's the
16 money that was turned in by Detective Hersl. Okay. And can
17 you see that?

18 **A.** Vaguely.

19 **Q.** Okay. So you testified you had two 100s and twenties and
20 fives; right?

21 **A.** Right.

22 **Q.** Okay. But here there's \$1 bills and there's \$10 bills;
23 correct?

24 **A.** Correct.

25 **Q.** Okay. Now, that looks like somebody that's trying to make

1 change, correct, lower denominations?

2 **A.** Correct.

3 **Q.** And it's your testimony you didn't have any ones on you?

4 **A.** No, no ones.

5 **Q.** Or tens?

6 **A.** They were tens and fives. Yeah. No -- no ones.

7 **Q.** Now, isn't that indicative of someone who deals drugs?

8 **A.** What's that?

9 **Q.** Small bills.

10 **A.** I'm not sure what you mean by that.

11 **Q.** Ones, fives, tens rather than having large amounts of
12 money?

13 **A.** Anybody can carry money, regardless of if it's ones,
14 fives, tens.

15 **Q.** Sure. But I'm saying isn't that indicative of selling
16 drugs? You've sold drugs before. You've admitted that.

17 **A.** No. I got -- if you want to bring that up, it was a
18 conspiracy -- not a conspiracy, but it was -- I had a
19 co-defendant, and I was a part of a co-defendant. It wasn't me
20 got locked up directly for serving drugs.

21 But to what you just asking me, I don't know if it's
22 indicative to who carry what kinds of money.

23 **Q.** All right. That's fine.

24 **MR. RAFTER:** I have nothing further, Your Honor.

25 **THE COURT:** All right.

~~TATE~~ ~~CROSS~~

1 Q. I mean, it's a drug market; right?

2 A. That's what y'all label it as, but I don't see it as a
3 drug market or whatever y'all label it as.

4 Q. Well, do you know if people sell drugs in that area?

5 A. People sell drugs in Baltimore City.

6 Q. Right. Well, this is in Baltimore City; right?

7 A. Right.

8 Q. Right. So if people sell drugs in the area, that's a good
9 indication -- by one -- I'm sorry. I'm sorry. Let me take a
10 step back.

11 When I say "open-air drug market," what I'm suggesting is
12 that's a particular area of the city in which people can come
13 to buy drugs because they know that drugs are sold in a
14 particular block or an area. Have you heard that terminology
15 before?

16 A. Yes.

17 Q. Okay. So in this particular area, right, where you
18 happened to have been when you were arrested, that's considered
19 an open-air drug market; is that your understanding?

20 A. Yes. I don't see drugs being sold when I'm there, so I
21 can't say specifically.

22 Q. You've never seen drugs sold in that neighborhood?

23 A. I mean, not in a while.

24 Q. Not in a while?

25 A. Yeah.

1 Q. When was the last time you saw drugs being sold there?

2 A. Maybe years ago, a few years ago.

3 Q. Three years ago?

4 A. Maybe about three or four years ago.

5 Q. So 2014?

6 A. Yeah, about -- about that.

7 Q. Okay. So you said that the police had provided you a
8 piece of paper, right, like to suggest that they had been in
9 contact with you?

10 A. Right.

11 Q. You got something like that?

12 A. Yes.

13 Q. And that's called like a citizen contact --

14 A. No. It wasn't a citation. It was like a napkin. Like he
15 just wrote it down on a regular white napkin or a piece of
16 paper or something.

17 Q. I'm not suggesting you would have gotten a citation,
18 because you hadn't done anything wrong. Are you saying that
19 the police wrote on a napkin --

20 A. Yeah --

21 Q. -- and gave that to you?

22 A. -- like the back of this piece of paper (indicating) or
23 something like that. It wasn't nothing from -- with
24 Baltimore City name on it.

25 Q. What was the purpose of doing that?

~~TATE~~ ~~CROSS~~

1 A. You might have to ask Officer Hersl that.

2 Q. Well, no. I'm asking you. Did you read the paper?

3 A. Yeah. It just had the date on it.

4 Q. I'm sorry?

5 A. It just had that date on it.

6 Q. He just wrote the date --

7 A. Yes.

8 Q. -- on the back of a piece of paper --

9 A. Yes.

10 Q. -- and gave it to you?

11 A. And said this is my warning. I see you next time, you
12 going to jail -- if I see you again, you going to jail.

13 Q. So there was an expectation that that piece of paper would
14 mean something to either one of you?

15 A. Not to me.

16 Q. Right.

17 A. Maybe there was an expectation, he expected --

18 Q. Do you know what was on the other side of the piece of
19 paper?

20 A. It was blank.

21 Q. So he just had blank, white pieces of paper in his car?

22 A. I just know what he came out the car and gave me.

23 Q. All right. So did he have a blank, white piece of paper,
24 singular, in his car that he used to give you that warning?

25 A. He had to if he gave it to me on the white piece of paper.

~~TATE~~ ~~CROSS~~

1 Q. So he did?

2 A. Yes.

3 Q. Okay. Did you see any other white pieces of paper?

4 A. No, I didn't see inside the car --

5 Q. Did you see any other scraps of paper lying around?

6 A. No.

7 Q. Okay. Now, when he first interacts with you a few days
8 before you were arrested, you say you have \$600 on you in cash?

9 A. Yes.

10 Q. And a pay stub?

11 A. Yes.

12 Q. And then a few days later you're seen again on the same
13 block, this time, according to you, with \$523 in cash?

14 A. 530-something and some change.

15 Q. 530 and change and a pay stub as well?

16 A. Yes.

17 Q. All right. Now, Friday was payday for you?

18 A. Right.

19 Q. But the few days before, that was not payday?

20 A. Right.

21 Q. But you had \$600 in cash in this neighborhood on that day?

22 A. Yes.

23 Q. Okay. And no police officer took that money from you on
24 that day, did they?

25 A. No.

1 Q. Right?

2 They didn't say on that day that you had gone to a stash
3 in a wall and sold drugs, did they?

4 A. No.

5 Q. They didn't write up a report saying that they found drugs
6 on your person?

7 A. No.

8 Q. They didn't say that you dropped drugs when they
9 approached you?

10 A. No.

11 Q. And they didn't say that you consented to a search and
12 they found some drugs or money on your person on that day
13 either, did they?

14 A. No.

15 Q. So according to you, you have \$600 in cash and that the
16 police write on a back of a -- the back or the front, just a
17 white piece of paper, a scrap, just the date and say, "Get out
18 of here or we'll arrest you the next time we see you"?

19 A. Yes.

20 Q. Okay. And so you go back a few days later?

21 A. Right.

22 Q. Right?

23 Now, you had said that you -- did you used to live in this
24 neighborhood?

25 A. Yeah, I used to live there. And I would coach around

~~TATE~~ ~~CROSS~~

1 Cecil Kirk.

2 Q. But I'm talking about that block in particular.

3 A. I never lived on Robb Street.

4 Q. You never lived on Robb Street?

5 A. No.

6 Q. And it's a dead-end; right? There's not much happening on
7 that street; is that fair to say?

8 A. Right.

9 Q. So what brought you to that block, not once but twice on
10 the same week?

11 A. My friends live in that neighborhood, like --

12 Q. Okay.

13 A. -- old basketball teammates, things of that nature.

14 Q. Who were those friends, sir?

15 A. Who are they?

16 Q. Yeah; the names.

17 A. Rodney Elliott.

18 Q. I'm sorry, sir?

19 A. Rodney Elliott, Damon Jackson. A few people.

20 Q. And at least those two people live on that -- was it the
21 2100 block or the 2200 block of Robb Street?

22 A. 2000, I believe, 2000 Robb.

23 Q. The 2000 block. All right.

24 So the dead-end, what block is that?

25 A. It's the 2000 block, I believe.

1 Q. You believe?

2 A. Yes.

3 Q. Okay.

4 A. 2000 block.

5 Q. So were you en route to visit with them, or had you
6 already -- had you already conducted your social business
7 there?

8 A. No. I actually had just like came outside. I was just
9 walking around the neighborhood, seeing who was outside and
10 what was going on for that day, for that evening.

11 Q. Well, I mean, it's the end of November. It's cold; right?

12 A. Not really, not that day. That particular day it was nice
13 outside, that Friday.

14 Q. Oh, so that day it was a nice day?

15 A. Yes.

16 Q. But you had a black ski mask on you when you were
17 arrested; right?

18 A. A hat? Yeah, a hat. Yeah.

19 Q. Oh, it was a hat?

20 A. Yes.

21 Q. So when it's labeled as a black ski mask, it's just a hat;
22 right?

23 A. Yes.

24 Q. Okay. On a nice, warm --

25 A. No, it wasn't warm in November. The sun was just out.

1 And I had -- I have a bald head, so it get cold sometimes.

2 Q. Okay. So even though it was a nice day, it was still hat
3 weather --

4 A. Right.

5 Q. -- winter hat weather?

6 A. Right.

7 Q. So you had been socializing and you're walking down the
8 street, but you weren't sitting on the steps of a vacant
9 building, were you?

10 A. No.

11 Q. 'Cause there are some vacant buildings in that area --

12 A. Right.

13 Q. -- right?

14 It's not a heavily populated block, is it?

15 A. It's a few vacants there, but it's a lot of people in that
16 block, I would say.

17 Q. A lot of people?

18 A. What do you mean? What do you consider "a lot"? I
19 mean --

20 Q. No. I'm asking you, sir. That was the term you used.

21 A. Yeah, it's a lot of people. It's not like a dead -- dead
22 zone. That's not a dead zone.

23 Q. My apologies. If I could just show you what was
24 Government's Exhibit 7. You know, I'm looking at -- this is a
25 picture that the Government had provided and introduced which

1 doesn't seem to be much going on on that block. In fact, I
2 only see one car parked; right?

3 **A.** Yes.

4 **Q.** But in all fairness, that's not even a dead-end; right?
5 That's just leading up to the dead-end. So maybe on the next
6 blocks, we'll see there's to be more social activity?

7 **MR. NIETO:** Court's indulgence.

8 **BY MR. NIETO:**

9 **Q.** If I could show you what had been marked as Hersl 17.

10 All right. This is the east side of the block. This is
11 the side of the block where you were walking; right?

12 **A.** Right.

13 **Q.** Okay. So just on this block and just in this picture, how
14 many vacants do you count?

15 **A.** Five.

16 **Q.** Five?

17 **A.** Five.

18 **Q.** Five; right.

19 There might be some a little bit further on down, but it's
20 a little difficult to see; right? Is that fair to say?

21 **A.** Yes.

22 **Q.** All right. Now, let's take a look at -- marked as 17. I
23 apologize for the glare. Let's see if I can move that a
24 little. There we go.

25 All right. So we see some -- like an abandoned couch in

1 that cut. All right? It's a little difficult to see whether
2 or not this house on the corner, whether that is a vacant or
3 not (indicating). But this is the other side; right?

4 **A.** Correct.

5 **Q.** Okay. All right. So when you came -- before you were
6 arrested, the days that led up to it, you had \$600 in cash. If
7 you don't mind me asking, sir, where was that money coming
8 from?

9 **A.** Work, side jobs, work, stuff like that.

10 **Q.** Well, you were paid biweekly?

11 **A.** Yes.

12 **Q.** Or were you paid --

13 **A.** I do side work for myself.

14 **Q.** Oh, I see.

15 **A.** I'm trying to start my own company, HVAC company.

16 **Q.** So there was a pay stub, but that had nothing to do with
17 the \$600 in cash?

18 **A.** No.

19 **Q.** Okay. So you had done some --

20 **A.** That \$600 came out of the bank, so it could have been part
21 of a direct deposit or cash that I had in the bank.

22 **Q.** All right. And you provided, I'm assuming, the Government
23 the documentation to establish where and how you came into that
24 money; right?

25 **A.** There was no need for me to do that.

~~TATE~~ ~~CROSS~~

1 Q. 'Cause they didn't ask to verify any of the information
2 you provided?

3 A. For the \$600, no.

4 Q. Well, how about the 523, is that coming from the same
5 \$600?

6 A. The 530-something dollars --

7 Q. My apologies. My apologies, sir. You're right. I'm not
8 trying to put words in your mouth. The 530-something dollars,
9 that is --

10 A. That came from that pay stub that I had on me that day.

11 Q. That didn't come from the \$600 in cash you had the few
12 days before?

13 A. No.

14 Q. All right. So that means in the matter of three or four
15 days, you had approximately \$1100 and 30 -- \$1130 in cash on
16 your person?

17 A. Right.

18 Q. And twice in the same week, you are in this block, this
19 drug neighborhood in Baltimore City; right?

20 A. Right.

21 Q. And you don't live there?

22 A. Right.

23 Q. The address -- I think they -- what was the address that
24 they had for you at the time, do you remember?

25 A. At that time I probably gave 'em a fake address because of

~~TATE~~ ~~CROSS~~

1 the way they was talking because I was scared they was probably
2 going to do something.

3 Q. That's a fair point, sir. When --

4 A. Well, Rogate Drive, that's my old --

5 Q. Rogate Drive.

6 A. That's my old address.

7 Q. Right. Because that was the address that you had used in
8 prior court proceedings like in 2004. That wasn't your current
9 address, was it?

10 A. Correct.

11 Q. And there was also other addresses you had provided like
12 Barnsley Place and 5430 Park Heights and 7 Henley Court, if I'm
13 pronouncing that correctly.

14 A. Yes.

15 Q. Do you remember those addresses?

16 A. Yes.

17 Q. All right. So on the second day in which the police
18 interacted with you, they're alleging that you were selling
19 drugs from a wall.

20 A. The 27th, I believe so.

21 Q. Yes, sir. Well, I mean, you read the paperwork, but
22 that's what the allegations were?

23 A. Right. That's the allegations.

24 Q. But you're saying that's completely false?

25 A. Right.

~~TATE~~ ~~CROSS~~

1 Q. All right. And you, regrettably, had dealt drugs or been
2 involved in the drug game earlier in your life?

3 A. I was not in the game, but just in the experience. But I
4 was with someone and something happened, and I was there at
5 that moment.

6 Q. Because you had mentioned -- I think you maybe -- I don't
7 want to put words in your mouth. I think you had mentioned as
8 a teenager you had gotten into some stuff is that -- am I
9 correct?

10 A. No, I didn't get in no trouble when I was a teenager. I
11 did some things, but --

12 Q. Okay. But in 2004, when you were about 23 --

13 A. Right.

14 Q. -- that's when you were put on probation for distribution
15 of drugs?

16 A. Right.

17 Q. Right. And that -- and that you had given the
18 Rogate Drive as an address in addition to those other three
19 addresses?

20 A. At that time I was living on Rogate Drive,
21 5430 Park Heights.

22 Q. 5430 Park Heights. Okay.

23 But that wasn't your last arrest for drug distribution,
24 was it?

25 A. Yes, I believe so.

~~TATE~~ ~~CROSS~~

1 **Q.** What about in Baltimore County?

2 **A.** I never was arrested. That was --

3 **THE COURT:** Approach the bench.

4 **THE WITNESS:** Yeah. That was something -- I had
5 nothing to do with that.

6 **THE COURT:** Wait. Stop. Just a minute. Stop.

7 (Bench conference on the record:

8 **THE COURT:** Did I hear you say "arrest"?

9 **MR. NIETO:** I should have prefaced it a little better,
10 Your Honor. The Government in their direct examination had
11 elicited testimony that the -- this particular case had been
12 dismissed.

13 My concern is that the jury's going to infer that it
14 has something to do with Detective Hersl's or the credibility
15 of the statement of facts. 2014, he had been charged in
16 Baltimore County with possession with intent to distribute,
17 possession of large quantities, and firearm trafficking. Those
18 cases, I believe, were statted.

19 And I wanted to draw a connection between the fact
20 that that stet had nothing to do obviously with the
21 Baltimore City Police Department. But perhaps I was going
22 about it --

23 **MR. WISE:** Your Honor, I would just -- I'm sort of
24 mystified as to why Mr. Nieto is even cross-examining this
25 witness. This is a racketeering act which charges

1 Defendant Hersl alone. It's not within the conspiracy. We've
2 been going now for 20 minutes. And I just -- for the life of
3 me, I can't understand what this is all about.

4 **MR. NIETO:** It is mystifying.

5 **MR. WISE:** Other than to suggest there is a
6 conspiracy.

7 **THE COURT:** I do believe the conspiracy charge is
8 still in this case, and I do believe there are general
9 credibility issues.

10 I have no problem with Mr. Nieto doing a reasonable
11 amount of cross, even though I wasn't necessarily expecting it.
12 But, no. It would be completely unfairly prejudicial to get
13 into some other arrest in Baltimore County that did not result
14 in a conviction and didn't involve -- this officer has nothing
15 to do with it.

16 **MR. NIETO:** Okay. Then I'll move on to the next
17 topic.

18 **THE COURT:** Thank you.

19 **MR. NIETO:** Thank you, Your Honor.)

20 (Bench conference concluded.)

21 **THE COURT:** All right. I think we're going to move
22 on?

23 **MR. NIETO:** Yes, Your Honor. Yes, Your Honor.

24 **BY MR. NIETO:**

25 **Q.** So on the 27th, then, when you are arrested, right, the

1 officers say they see you stashing drugs in that wall, right,
2 at the end of the block?

3 **A.** Correct.

4 **Q.** Okay. Now, you had suggested that you had seen drug
5 dealers in that area maybe a year or so before?

6 **A.** No. That -- yeah, maybe so.

7 **Q.** Right. And so --

8 **A.** 2014.

9 **Q.** Are you -- are you aware of the concept of a stash --

10 **A.** Yes.

11 **Q.** -- in the drug --

12 **A.** Right.

13 **Q.** Right?

14 And so a stash is when someone's selling drugs, they keep
15 the drugs in another hidden location that they can access; but
16 if the police approach them, they would not have any contraband
17 on them; right?

18 **A.** Right.

19 **Q.** And have you seen -- not you, but have you seen other
20 people utilize a stash location?

21 **A.** No.

22 **Q.** You've never seen anyone use a stash location before?

23 **A.** No.

24 **Q.** So the instances that you've seen people sell drugs,
25 they've actually had it on their person?

1 **A.** Yes.

2 **Q.** All right. So on the 27th, when the officers arrest you,
3 they don't say that the drugs were on your person, do they?

4 **A.** No.

5 **Q.** And they didn't say in their reports that you consented to
6 a search or that you dropped the drugs; right? Nothing like
7 that?

8 **A.** Right.

9 **Q.** In fact, they do -- they explained that they see you going
10 back and forth to this wall or stashing this bag in the wall
11 and then recovering those drugs. That's what they say?

12 **A.** Yeah, that's what they said.

13 **Q.** And so it's your contention that they completely made up
14 that whole process?

15 **A.** Yes.

16 **Q.** And that they just rolled up on you for seemingly no good
17 reason whatsoever?

18 **A.** Yes.

19 **Q.** Okay. And that although days before, when you had \$600 on
20 your person, they never touched that money; they didn't take
21 that from you; correct?

22 **A.** Correct.

23 **Q.** But afterwards, a few days later, they take some of it but
24 submit the rest?

25 **A.** They -- whatever -- I didn't have \$530 in my property

1 papers. I had 91-cent. So from the time they had my money
2 till the 91 cent, I don't know where it went.

3 Q. So -- and if I may briefly, sir, the money that's
4 submitted to evidence control is less than what you say you had
5 on you?

6 A. Yes, and I didn't have no dollar bills in my pocket.

7 Q. You didn't have any dollar bills?

8 A. No.

9 Q. No, because dollar bills would suggest drug distribution;
10 right? And that's not what you were doing?

11 A. I wouldn't say that. Everybody carry dollar bills. I
12 just -- at that time I didn't have none.

13 Q. But you didn't carry dollar bills; right?

14 A. No, at that time I didn't have none.

15 Q. Right. Okay. But in your experiences, as limited as they
16 may be, you've never seen someone go to purchase drugs with
17 hundred-dollar bills; right?

18 A. I don't understand what you getting at.

19 Q. So what brought you back to this block three days after
20 this incredibly unpleasant experience with
21 Baltimore City Police?

22 A. 'Cause that's like a neighborhood I grew up in. That's my
23 family there. Like, I didn't do nothin' wrong. Why wouldn't I
24 go back.

25 Q. I'm sorry. Who is your family that lives in that block?

~~TATE~~ ~~CROSS~~

1 **A.** My teammates, my ex-teammates I consider family.

2 **Q.** Okay. Did you talk to them about your experiences?

3 **A.** Some of them were out there and saw that -- saw what
4 happened.

5 **Q.** Oh, so there were witnesses to this?

6 **A.** Right.

7 **Q.** Oh, and you provided their information, then, to the
8 federal government to corroborate your story; right?

9 **A.** No.

10 **MR. WISE:** Objection, Your Honor.

11 **THE WITNESS:** There was no need for me to do that.

12 **BY MR. NIETO:**

13 **Q.** There's no need for you to do that?

14 **THE COURT:** Sustained.

15 **THE WITNESS:** Right.

16 **THE COURT:** Sustained.

17 **MR. WISE:** Objection, Your Honor.

18 **BY MR. NIETO:**

19 **Q.** You had told the federal agents that it had been raining
20 on that day you were arrested?

21 **A.** It had just started raining. It was just starting to
22 rain.

23 **Q.** Just started raining; right? And that you had been
24 speaking with an older male from the neighborhood?

25 **A.** Right.

~~TATE~~ ~~CROSS~~

1 Q. That's true?

2 A. That's who I was, well, walking up the street with when
3 that happened.

4 Q. Oh, so you were walking up the street with somebody?

5 A. Right. But he was --

6 Q. So you weren't alone?

7 A. I was walking into his direction, and he was there like on
8 his stoop.

9 Q. And my apologies, I'm trying to figure out if you were
10 speaking with him or if you were going to speak with him.

11 A. No. I was speaking as I was going along. Like, I didn't
12 stop and hold a conversation with him.

13 Q. Okay. But you mentioned -- but you told the
14 federal government that you were speaking with an older male in
15 the neighborhood?

16 A. Right.

17 Q. Okay. And you were holding an alcoholic drink?

18 A. Right.

19 Q. And you were walking down the street?

20 A. Walking up the street.

21 Q. Walking towards the dead-end?

22 A. Yes.

23 Q. All right. Okay. So after your case was dismissed, did
24 you ask that the police department return the money that was in
25 evidence against you?

~~DATE REDIRECT~~

1 **A.** No, I ain't asking for nothing. I just got out of
2 Baltimore City. I just left the city after that.

3 **Q.** Okay. And the gentleman sitting to the -- on the end
4 right there (indicating), he wasn't part or parcel of this
5 interaction with the city police, was he?

6 **A.** No.

7 **MR. NIETO:** Okay. Nothing further, Your Honor.

8 **THE COURT:** All right. Thank you.

9 Any redirect?

10 **MR. WISE:** Just briefly, Your Honor.

11 **THE CLERK:** Mr. Nieto.

12 **THE COURT:** We have to retrieve the microphone.

13 REDIRECT EXAMINATION

14 **BY MR. WISE:**

15 **Q.** You were asked questions about money you had a few days
16 earlier, about \$600, and you -- Mr. Nieto on a couple of
17 occasions referred to the amount of money you actually had on
18 the 27th as \$520, but that wasn't what you said; right?

19 **A.** Right.

20 **Q.** So just to be clear, I'm going to put up HT-9.

21 On the 27th, you had \$530 on you; right?

22 **A.** Right.

23 **Q.** And that was in your pockets, right, or pocket?

24 **A.** Yes.

25 **Q.** And the source of it was your job as an HVAC technician;

~~PAGE REDIRECT~~

1 right?

2 **A.** Right.

3 **Q.** And then ultimately you saw that the charging papers
4 showed that only \$216 had been turned in; right?

5 **A.** Right.

6 **Q.** So that means \$314 had been taken from you on the 27th and
7 not turned in; right?

8 **A.** Yes.

9 **Q.** And you testified that Defendant Hersl told Fassl to
10 search you. Fassl took the money. And then Fassl asked Hersl
11 what to do with it.

12 And Fassl said, "Should I give it back to him?"

13 And Hersl said, "No. Keep it"?

14 **MR. PURPURA:** Objection.

15 **THE WITNESS:** Correct.

16 **THE COURT:** Sustained.

17 **MR. PURPURA:** Thank you.

18 **BY MR. WISE:**

19 **Q.** What did Hersl tell Fassl to do?

20 **A.** Keep the money.

21 **Q.** And you were asked by Mr. Nieto if you made a complaint or
22 asked for the money back, I guess, after your arrest.

23 Do you remember being asked that?

24 **A.** Yes.

25 **Q.** And you testified "no"; you left the city. Right?

~~PAGE REDIRECT~~

1 A. Right.

2 Q. You live in Anne Arundel County now; right?

3 A. Yes.

4 Q. How long were you in jail when you were arrested?

5 A. Four days, I believe.

6 Q. And what happened while you were in jail?

7 A. What do you mean?

8 Q. What happened to your job?

9 A. Oh, I lost my job. Lost my job.

10 Q. And why did you lose your job?

11 A. 'Cause I didn't show up for work.

12 Q. And why didn't you show up for work?

13 A. I was in jail.

14 Q. And what happened when you lost your job?

15 A. I lost my job, lost my car; had to move; owed people money
16 for helping me get bailed out, which I'm still paying people
17 back; and couldn't get a job for a while because of this and --
18 yeah, I just basically started maybe a year ago starting
19 getting back afloat.

20 Q. So from November of 2015, you were out of work, then, for
21 about how long because of this?

22 A. Up until, like, I want to say April or February of '16 --

23 Q. Okay.

24 A. -- I got a job.

25 Q. And that's around the time the state case was dismissed;

~~PAGE REDIRECT~~

1 right?

2 **A.** Right. It was dismissed in March --

3 **Q.** Okay.

4 **A.** -- I believe. And I got a job in April, yeah. I got a
5 job after it was dismissed.

6 **Q.** All right.

7 **A.** 'Cause I couldn't get a job because -- until -- because
8 that case was pending because nobody would hire me. So once
9 that was over with, that's when I had got another job.

10 **Q.** And that's a job you've had since then?

11 **A.** Yes.

12 **Q.** You testified that when the officers pulled up on you, you
13 knew they were police 'cause they had vests on; is that right?

14 **A.** Right. And the voices.

15 **Q.** And the voice -- you said you recognized their voices --

16 **A.** Right.

17 **Q.** -- is that right?

18 **A.** Yes.

19 **Q.** Were they armed? Did you see if they were armed?

20 **A.** Yes.

21 **Q.** All three of them?

22 **A.** Yes.

23 **MR. WISE:** Nothing further, Your Honor.

24 **THE COURT:** All right. Thank you. Anything else?

25 **MR. RAFTER:** No, Your Honor.

~~ARMSTRONG DIRECT~~

1 **MR. NIETO:** No, Your Honor.

2 **THE COURT:** All right. Thank you, sir. You are
3 excused. You may step down.

4 (Witness excused.)

5 **THE COURT:** Government have another witness?

6 **MR. HINES:** Yes, Your Honor. The United States calls
7 Dennis Armstrong.

8 **THE CLERK:** Mr. Hines --

9 **MR. WISE:** I'll get him.

10 **THE CLERK:** Thank you.

11 **MR. HINES:** Thank you, Ms. Moyé.

12 **THE CLERK:** Please raise your right hand.

13 DENNIS ARMSTRONG, GOVERNMENT'S WITNESS, SWORN.

14 **THE CLERK:** Please be seated. Please speak directly
15 into the microphone.

16 State your full name for the record and spell your
17 last name, please.

18 **THE WITNESS:** Dennis Armstrong, A-R-M-S-T-R-O-N-G.

19 **THE CLERK:** Thank you.

20 DIRECT EXAMINATION

21 **BY MR. HINES:**

22 **Q.** Good afternoon, Mr. Armstrong.

23 **A.** Good afternoon.

24 **Q.** Without giving your exact address, where do you live?

25 **A.** ████████████████████

~~ARMSTRONG DIRECT~~

1 Q. Which county or city is that in?

2 A. Baltimore City.

3 Q. How long have you lived in Baltimore?

4 A. All my life.

5 Q. And how old are you today?

6 A. 37.

7 Q. Have you previously been convicted on a couple of
8 occasions of drug offenses?

9 A. Yes.

10 Q. In 2011 were you convicted of distributing controlled,
11 dangerous substances and sentenced to 15 years' imprisonment
12 with ten years suspended?

13 A. Yes.

14 Q. I'm going to be asking you some questions about
15 August 8th, 2016. Were you arrested on that day?

16 A. Yes.

17 Q. Did you have cocaine on you that day?

18 A. Yes.

19 Q. Now, have you testified about what happened to you in the
20 grand jury in this case?

21 A. Yes.

22 Q. When you testified in the grand jury, were you given
23 immunity?

24 A. Yes.

25 Q. And do you have immunity for your testimony today?

~~ARMSTRONG DIRECT~~

1 A. Yes.

2 Q. What do you understand that to mean?

3 A. That means, like, whatever my testimony is, it's not --
4 nothing can happen to me.

5 Q. And what are your obligations in order for that protection
6 to apply to you?

7 A. Tell the whole truth.

8 Q. Mr. Armstrong, what do you do for a living today?

9 A. I'm a maintenance worker for the Baltimore City Housing
10 Authority.

11 Q. And how long have you worked for the Baltimore City
12 Housing Authority?

13 A. Four years.

14 Q. What were you doing for a living in August of 2016?

15 A. I was a maintenance worker for the Housing Authority.

16 Q. And were you also selling drugs at that time?

17 A. Yes.

18 Q. Directing your attention to August 8th, were you driving
19 from a storage unit near Sinclair Lane?

20 A. Yes.

21 Q. Can you describe what happened.

22 A. I was at the stoplight right there, the Shannon Drive and
23 Sinclair Lane, and proceeded to make a right to go northbound
24 on Sinclair Lane.

25 Q. And were you the only occupant in your vehicle?

~~ARMSTRONG DIRECT~~

1 A. Yes.

2 Q. What happened when you proceeded to go right onto
3 Sinclair Lane from Shannon Drive?

4 A. When I turned to make the right onto Shannon Drive,
5 several officers pulled up on me on the left side going
6 northbound in a black Chevy Impala.

7 Q. So were you going southbound?

8 A. Northbound towards Moravian.

9 Q. So did they pull up sort of alongside of you?

10 A. Yes.

11 Q. What happened when several officers pulled up alongside of
12 you?

13 A. Told me to roll my window down.

14 Q. Did you comply?

15 A. Yes.

16 Q. What happened when you rolled your window down?

17 A. As I rolled my window down, they asked me where I was
18 coming from.

19 I say, "The post office."

20 Q. Where were you actually coming from?

21 A. My storage.

22 Q. And why did you say the post office instead of your
23 storage locker?

24 A. Because, you know, they don't -- it's just 'cause it's
25 protocol.

~~ARMSTRONG DIRECT~~

1 Q. Was there something that you had in your storage locker?

2 A. Yes.

3 Q. What did you have in your storage locker?

4 A. Cocaine.

5 Q. Approximately how much cocaine did you have in your
6 storage locker?

7 A. 2 kilograms.

8 Q. All right. Now, after you told the officers that you were
9 coming from the post office, what did you observe them do?

10 A. They was saying, "Pull over." But then in the same
11 instance, they, like, grabbed the mic, like, pretty much,
12 "Sarge, we got the suspect."

13 Q. So did I understand what you're saying, one of the
14 officers in the vehicle grabbed like a microphone or something?

15 A. Yeah; like grabbed the vest, you know, like the
16 walkie-talkie.

17 Q. And they said, "Sarge, we have the suspect"?

18 A. Yes.

19 Q. What happened next?

20 A. They were like, "Proceed to pull over," and I just sped up
21 and took off.

22 Q. And why did you speed up and take off?

23 A. Because I was -- had cocaine on me.

24 Q. So you had cocaine in your vehicle as well as from your
25 storage unit?

~~ARMSTRONG DIRECT~~

1 A. Yes.

2 Q. And as you drove away or sped off, what happened next?

3 A. They proceeded to chase me.

4 Q. They chased you in their vehicle following your vehicle?

5 A. Yes.

6 Q. What did you do while they were chasing you in your
7 vehicle?

8 A. Tried to dispose of the cocaine.

9 Q. And to dispose of the cocaine, was that throwing it out
10 the window?

11 A. Yes.

12 Q. Ultimately, did the officers get to you?

13 A. Yes.

14 Q. And describe how that happened.

15 A. Proceeded to chase and end up all the way to like North
16 Belair Road and drove into a dead-end street, excuse me, and
17 jumped out and proceeded on feet.

18 Q. Now, prior to you jumping out of your vehicle, what -- did
19 you have money on you, on your person, or in your vehicle?

20 A. In the vehicle.

21 Q. How much money did you have in your vehicle?

22 A. About 8 grand, \$8,000 or so.

23 Q. And how had you earned this \$8,000?

24 A. Drug proceeds.

25 Q. I'm showing you what's marked as DA-16, Mr. Armstrong.

~~ARMSTRONG DIRECT~~

1 Where in your vehicle was the money?

2 **A.** In the glove box.

3 **Q.** After you got out of your vehicle -- well, first of all,
4 when you got out of your vehicle, did you leave the money in
5 the vehicle?

6 **A.** Yes.

7 **Q.** What happened next?

8 **A.** I proceeded on feet and was chased and caught in the rear
9 alley.

10 **Q.** And were you detained?

11 **A.** Yeah; and then apprehended, was walked back out the alley
12 and put in the police car. Several officers jumped in my
13 vehicle and continued to ride back the route that we did on the
14 chase, looking -- I guess looking for cocaine and then end up
15 back at the storage facility.

16 **Q.** And the officers drove your vehicle back to the storage
17 facility?

18 **A.** Yes.

19 **Q.** And were you in handcuffs at this time --

20 **A.** Yes.

21 **Q.** -- at the police car?

22 **A.** Yes.

23 **Q.** What happened when you got back to the storage facility?

24 **A.** I was sittin' out in the parking lot, and a red car, they
25 pulled up in my van. So the officers got out and was talking

1 and talking and talking.

2 And then one came over to me, started asking me questions.

3 And then the other ones proceed to, you know, search the car

4 and went to the officer to the storage place.

5 Q. Did you know the names of any of the officers?

6 A. Yes.

7 Q. What were the names of the officers that you knew?

8 A. Hersl, Jenkins, and the other one Gondo. And that's it,
9 pretty much, offhand.

10 Q. Now, what -- what did you see Hersl do while you were
11 there?

12 A. He was on the rear, like. Jenkins was on the driver's
13 side. Gondo was proceeding to talk to me like, asking me
14 questions, like, Man, we good guys. Just let us know what's
15 going on, this, that, and the third.

16 And Jenkins was on the passenger side, you know, searching
17 through the car, looking in the armrest and stuff like that.

18 Q. And I think I missed this, and my apologies: Where did
19 you say Hersl was in that?

20 A. Yeah. In the passenger side of the van.

21 Q. Okay. So Gondo's talking to you near the police car?

22 A. Yes.

23 Q. And you see Hersl and Jenkins in the van?

24 A. Yes.

25 Q. And Hersl's near the passenger side where the --

~~ARMSTRONG DIRECT~~

1 **MR. NIETO:** Objection, Your Honor. He just said this
2 exact testimony. He's just repeating it back.

3 **THE COURT:** Yes, but there was some lack of clarity.
4 It was introduced earlier. So on this occasion, I will permit
5 him to re-ask this question.

6 **MR. HINES:** Thank you, Your Honor.

7 **BY MR. HINES:**

8 **Q.** Was Hersl on the side closest to the glove box with your
9 money?

10 **A.** Yes.

11 **Q.** What happened next?

12 **A.** Like, he had a little tool and, like, pried the glove box
13 open, broke the latch on it.

14 **Q.** What happened after Hersl broke open the glove box?

15 **A.** He called over to other officers, and they start talking
16 on the other side of the van.

17 **Q.** And then what, if anything, happened to you at this point?

18 **A.** I was still sittin' in the police car.

19 **Q.** What did you see next?

20 **A.** Then I seen Jenkins and another guy walk back to the
21 office, I guess to talk to the lady or whatever, whatever. And
22 then they came back. And then they -- you see 'em leave and
23 proceed down the rear passageway of the storage facility.

24 **Q.** So when you say they went to the office, is that the
25 office of the storage unit?

1 A. Yes.

2 Q. Had you given any of the officers consent to go and search
3 your storage unit?

4 A. No.

5 Q. Did you have a key to the storage unit?

6 A. Yes.

7 Q. Did anybody else have a key to your storage unit?

8 A. No.

9 Q. What happened after you saw the officers go to the office
10 and then come back up towards you?

11 A. One, they walked back to the van and continued the talking
12 for several minutes, like going through the paperwork and stuff
13 like that and the glove box.

14 And then they would go back to the office again. And then
15 the guy walked back over to me again and say, "Anything else
16 you want to tell us? We know you got a storage spot."

17 Q. Who said that?

18 A. Jenkins came -- Jenkins and Gondo came, but they say,
19 Yeah, we know you got a storage box. We know what number it
20 is, and just tell us what it is, what's going on, and stuff
21 like that.

22 Q. And did you tell 'em which storage unit you had?

23 A. No.

24 Q. Of the -- which officers had you seen go to the office of
25 the storage unit?

~~ARMSTRONG DIRECT~~

1 A. Jenkins and another officer.

2 Q. Now, at some point were you taken away?

3 A. Yes.

4 Q. Where were you taken to?

5 A. Central Booking.

6 Q. Who took you to Central Booking?

7 A. Another officer.

8 Q. So not Mr. Hersl?

9 A. No, I don't recall, like, what officer took me to, um --
10 to the district.

11 Q. How long were you at Central Booking?

12 A. Approximately -- probably about 20 hours.

13 Q. Were you -- what were you charged with? What criminal
14 charges did you face?

15 A. Possession or possession with intent and -- what? Driving
16 without a seat belt and driving with a minor in the car without
17 a seat belt or something.

18 Q. Did you have a minor in your car when you went from the
19 police?

20 A. No, no.

21 Q. Were you wearing a seat belt when you had left?

22 A. Yes.

23 Q. Did the officers say anything to you about why they had
24 charged you with a seat belt violation?

25 A. No.

~~ARMSTRONG DIRECT~~

1 Q. Now, when you were released from Central Booking -- well,
2 did you make bail? Is that how you were released?

3 A. Yes.

4 Q. When you were released, did you receive some property
5 back?

6 A. Yes.

7 Q. And I'm showing you what's been marked as DA-2. Is this a
8 personal property receipt that you received and signed?

9 A. Yes.

10 Q. And does it show that you received a black belt, a black
11 watch, and some, looks like ten lottery tickets?

12 A. Yes.

13 Q. Did you receive any of your \$8,000 in cash back when you
14 were released from jail?

15 A. No.

16 Q. Did you -- when you were charged in the case, did you
17 learn how much money the police said that they had taken from
18 you?

19 A. Yes; when I received my charge papers.

20 Q. How much money was that?

21 A. Like twenty -- I think like 2600, 2800, maybe.

22 Q. So approximately 2800?

23 A. Yes.

24 Q. And so that leaves 5,200 left that you had?

25 A. Yes.

~~ARMSTRONG DIRECT~~

1 Q. That was not accounted for?

2 A. Yes.

3 Q. How much of your 2 kilograms of drugs -- well, let me
4 rephrase that.

5 When you got your charge paperwork, did you learn how much
6 drugs the cops had turned in?

7 A. Yes.

8 Q. How much did they actually turn in?

9 A. Still like, maybe like 2 grams, less than nothing, a
10 couple crumbs that they say they found in the van.

11 Q. So just a small amount of cocaine?

12 A. Yes.

13 Q. Is that why you were charged with possession instead of
14 possession with intent to distribute?

15 A. I think they charged me -- I think it was charged -- still
16 charged with both, like possession and possession with intent.

17 Q. Were you convicted of either of the offenses?

18 A. Yes.

19 Q. Was it the possession offense that you were convicted of?

20 A. Yes.

21 Q. Now, you testified earlier that you had about 2 kilograms
22 of cocaine in the storage unit?

23 A. Yes.

24 Q. Did you say anything about the missing 2 kilograms from
25 your charging paperwork?

~~ARMSTRONG DIRECT~~

1 A. No.

2 Q. And why not?

3 A. Because that's a lot more time than simple possession.

4 Q. And you had previously served five years, right, on a
5 15-year sentence in which roughly 10 was suspended; is that
6 right?

7 A. Yes.

8 Q. And was that a charge where you had a larger amount of
9 drugs?

10 A. No.

11 Q. In this case how much time were you sentenced to just for
12 the possession charge?

13 A. Oh, two years' probation.

14 Q. So you were in jail for a short period of time, and then
15 you had about two years of probation?

16 MR. NIETO: Objection, Your Honor, it's the same
17 thing. It's the same question just answered.

18 THE COURT: Overruled.

19 Go ahead.

20 BY MR. HINES:

21 Q. Were you in jail for just a short period of time before
22 serving your two years of probation, including the time at
23 Central Booking?

24 A. Yes. Say that -- I don't -- I don't understand about
25 this --

~~ARMSTRONG DIRECT~~

1 Q. I can rephrase the question.

2 Was your conviction a sentence for three years with all
3 but one month suspended and two years of probation?

4 A. I think so, yes.

5 Q. And because you received a lower sentence, did that factor
6 into your decision not to say anything about --

7 MR. PURPURA: Judge, objection.

8 MR. NIETO: Objection.

9 THE COURT: Sustained.

10 MR. PURPURA: Thank you.

11 BY MR. HINES:

12 Q. Did the length of your sentence factor into your decision
13 whether to say anything about the cocaine?

14 MR. NIETO: Objection, Your Honor.

15 THE COURT: Sustained. I think you asked him why, and
16 I think he explained. You can ask him --

17 BY MR. HINES:

18 Q. When you were released from jail, did you go back to your
19 storage locker?

20 A. Yes.

21 Q. And what did you find?

22 A. Just ransacked, like destroyed.

23 Q. I'll show you -- did you take some photographs of your
24 storage unit?

25 A. Yes.

~~ARMSTRONG DIRECT~~

1 Q. How long after your initial arrest did you go back to the
2 storage unit?

3 A. Probably within a couple hours after my release.

4 Q. I'm going to show you what's been marked as DA-15, which
5 is a series of about 10 photographs.

6 Is this a photograph you took?

7 A. Yes.

8 Q. And what does it show?

9 MS. WICKS: Your Honor, may we approach?

10 THE COURT: All right.

11 (Bench conference on the record:

12 MR. NIETO: Your Honor, I just want Ms. Wicks to
13 confirm. The pictures that are being shown, I don't know if we
14 had received those previously.

15 MS. WICKS: They're not in the exhibit book.

16 MR. NIETO: I apologize. They're not in the exhibit
17 book.

18 MR. HINES: So Mr. Armstrong brought them today. I
19 showed them to Mr. Purpura, whose client is implicated in this
20 storage facility episode. I can show Mr. Nieto right now if he
21 has any questions about them.

22 THE COURT: Well, so it's getting close to 5 o'clock.
23 Perhaps this is a good time for a recess. We're certainly not
24 going to finish cross before we have to excuse the jury.

25 MR. WISE: Mr. Purpura had told me for scheduling

1 purposes that his cross was very short, but we were concerned
2 about having Mr. Armstrong come back again tomorrow with his
3 work schedule.

4 I wasn't expecting, frankly, any cross from Mr. Nieto
5 or Ms. Wicks. But obviously, that was not the case with the
6 last witness. I don't know if their intention is to cross this
7 guy as well, because I think we could get through him so he
8 doesn't have to come back if Mr. Purpura is still sticking to
9 his original estimate.

10 **MR. NIETO:** I just wanted to see. I hadn't seen them
11 before. I will be cross-examining this witness for a little
12 while.

13 If we could just take a -- give me a minute or two to
14 look at these to understand a little more about them. Like I
15 said, they are being given to me now in the middle of his
16 testimony.

17 **THE COURT:** Right. I appreciate that.

18 **MR. WISE:** He brought them with him.

19 **THE COURT:** Yes, but you still should have them to
20 Mr. Nieto as well as to Mr. Purpura.

21 **MR. NIETO:** I will work expeditiously. I know
22 Your Honor's schedule being what it is, would you like me to
23 just look at them here?

24 **THE COURT:** Do you want to just go back and sit
25 down -- again, I don't know whether we'll get through. I mean,

~~ARMSTRONG DIRECT~~

1 obviously it would be much better -- I would rather not have to
2 ask Mr. Armstrong back, but I can only keep the jury so long.

3 **MR. HINES:** I have very little left on direct.

4 **THE COURT:** Sure. Go ahead. Take a look.)

5 (Bench conference concluded.)

6 **BY MR. HINES:**

7 **Q.** Mr. Armstrong, I was asking you about the first photograph
8 of DA-15. What is this a photograph of?

9 **A.** The number of the storage unit.

10 **Q.** Was that your storage unit?

11 **A.** Yes.

12 **Q.** I'll show you the second photograph. What does this
13 photograph show?

14 **A.** That's where the lock used to be at on the storage unit.

15 **Q.** Is this how you found your storage unit when you returned
16 from jail?

17 **A.** Yes.

18 **Q.** What did you think when you saw this?

19 **MR. NIETO:** Objection, Your Honor.

20 **THE COURT:** Sustained.

21 **BY MR. HINES:**

22 **Q.** I'll show you Photograph 3 from the storage unit. What
23 does that show?

24 **A.** Like the inside of the storage unit.

25 **Q.** Photograph 4?

~~ARMSTRONG DIRECT~~

1 A. Inside.

2 Q. Photograph 5?

3 A. Inside.

4 Q. Is this a wall --

5 A. Yeah. It's like next door to the storage unit, like the
6 one next to it.

7 Q. So is the stuff that's shown in this photo actually for
8 the unit next door?

9 A. Yes.

10 Q. So is your unit sort of on this side (indicating)?

11 A. Yes.

12 Q. What is that?

13 A. It's a -- like the back wall of the storage unit.

14 Q. What is this photograph?

15 A. Like the floor, the inside of like my unit.

16 Q. Is that where there was a wall?

17 A. Yeah.

18 Q. And how about this photograph of these TVs back there
19 (indicating)?

20 A. Yeah. That's the other side of the other unit.

21 Q. So that's not your unit, but you can see the other side
22 from your unit?

23 A. Yes.

24 Q. Because the wall has been --

25 A. Yes.

~~ARMSTRONG DIRECT~~

1 Q. -- knocked down?

2 And, Mr. Armstrong, what did you observe regarding
3 anything that was taken from your unit when you returned?

4 A. Pretty much everything was like ransacked and like
5 searched through, like all on the floor, just dismembered.

6 Q. I think you said this before, but were the 2 kilograms of
7 cocaine there when you returned?

8 A. No.

9 Q. And were the police officers that you interacted with and
10 observed, were they armed when they arrested you?

11 A. Yes.

12 Q. Armed with their guns?

13 A. Yes.

14 Q. Was Detective Hersl armed?

15 A. I would think so, yes.

16 MR. HINES: No further questions, Your Honor.

17 THE COURT: All right.

18 MR. PURPURA: Your Honor, I think it was
19 misrepresented. I probably have about 30 minutes. It's up to
20 the Court.

21 THE COURT: All right. You can all come back up to
22 the bench, then.

23 (Bench conference on the record:

24 THE COURT: Okay. So we obviously need to bring him
25 back. The question, I don't know what his specific schedule

1 is, whether it's going to make any difference whether he's
2 there first thing in the morning, whether you feel like you
3 need to cross him first thing in the morning. I have no idea
4 what his schedule is, so I guess my first question is whether
5 you -- as long as you get to cross him sometime, does it matter
6 if it's first thing tomorrow morning?

7 **MR. PURPURA:** Whatever is convenient for the witness.

8 **MR. WISE:** We'll talk to him afterwards and see if
9 it's better to come first thing in the morning to finish it up
10 or --

11 **MR. NIETO:** Obviously, we'd prefer to do it in the
12 morning; but if his schedule won't allow for it, we understand.

13 **THE COURT:** Sure. Sure. Okay. Well, then I'm going
14 to excuse the jury until 10 o'clock tomorrow morning, and you
15 can talk to Mr. Armstrong about what's the best time to come
16 back.

17 **MR. PURPURA:** Thank you.

18 **MR. WISE:** Thank you, judge.)

19 (Bench conference concluded.)

20 **THE COURT:** All right. Ladies and gentlemen, we are
21 going to be adjourning for today. I'm going to ask counsel and
22 the witness to stick around, but you are going to be excused.
23 Usual instructions: Leave everything here. Keep an open mind.
24 Don't talk or read about the case. And we'll see you at
25 10 o'clock, 10 o'clock tomorrow morning.

1 Thank you very much.

2 (Jury excused at 4:59 p.m.)

3 **THE COURT:** All right. Mr. Armstrong, you're going to
4 just need to talk with counsel. We'll try to figure out what
5 is the best time for you to come back, but you can talk to
6 counsel about that in just a minute.

7 And if you want to go with the Task Force Officer for
8 a moment.

9 Thank you.

10 Wait. Wait. Wait. Wait. Not that way.

11 Okay. I have one other issue I wanted to address with
12 counsel up at the bench.

13 (Bench conference on the record:

14 **THE COURT:** So we can talk now or if you had free time
15 to come to chambers tomorrow morning, we could talk about it in
16 chambers. I sort of wanted to see where we were on defense
17 witnesses and confirm -- I think we've talked about it in
18 chambers before what advice could or not could be given. I'm
19 happy to continue that conversation now, but if you want to --

20 **MR. PURPURA:** I'm sorry. What was the last part,
21 Judge?

22 **THE COURT:** I'm recalling that we had a conversation
23 about defense witnesses. And when we were in chambers and we
24 had reached some agreement about what the Government might or
25 might not say, and I had said that I was also going to speak

1 with Ms. Essex.

2 I'm ready to sort of basically confirm the
3 understanding, where I think we were. I didn't know if there
4 was anything else that we needed to talk about in terms of
5 defense witnesses that would be helpful to do either now or if
6 you would prefer to come to chambers --

7 **MR. PURPURA:** That's a good question.

8 **THE COURT:** -- tomorrow morning.

9 **MR. PURPURA:** On the police officers, maybe -- I'm not
10 sure. My understanding is they're all going to show. And I
11 need them, unless there's some issue which I'm not aware of.

12 **THE COURT:** Okay. Let me just put on the record, we
13 had a conversation about -- and there were some filings --
14 about whether the officers that you've subpoenaed for next --
15 for whenever should be advised of their potential
16 Fifth Amendment rights.

17 My recollection of what we had discussed in
18 chambers -- and I just wanted to put it on the record -- is
19 that you had subpoenaed them; you had spoken to them about
20 their testimony.

21 They were also -- the Government was free to speak
22 with them as well, that if the witness officers, I'll just call
23 them, defense witness officers in speaking to the Government
24 asked them, Do we need counsel? --

25 **MR. PURPURA:** Right.

1 **THE COURT:** -- that their response would approximately
2 be, you know, I can't advise you of that specifically, but you
3 have a right to consult with counsel if you want to.

4 If they followed up with some question along the lines
5 of, Well, how do I get counsel? Or I can't afford counsel, or
6 something of that nature, the Government was then free to
7 advise them that they might, depending on their financial
8 circumstances, be entitled to counsel and put them in touch
9 with Ms. Essex.

10 I think that's where we remain at this point. I think
11 that's an appropriate resolution, now that I have spoken to
12 Ms. Essex a couple of days ago and just told her about that
13 conversation. I said I had no idea whether any one of these
14 defense witnesses would be reaching out to her or not, and I
15 haven't followed up --

16 **MR. PURPURA:** Okay.

17 **THE COURT:** -- since then.

18 **MR. WISE:** So just -- I don't know if you mentioned
19 this at the time or if this is since then. As we said, we did
20 not reach out to defense witnesses. Sergeant Burns came to us,
21 wanted to talk to us, so we talked to him briefly.

22 **THE COURT:** Okay.

23 **MR. WISE:** Detective Fassl did the same thing, but we
24 haven't engaged with him because what he told us was that he
25 had not talked to Mr. Purpura. And so we were concerned about

1 being sort of the first people to talk to him and any kind of
2 suggestion that anything we said chilled the defense.

3 And so we've sort of treated him differently from
4 Burns, 'cause Burns came to us and said, you know, This has
5 happened, and I don't know what to do. And I said a lot of
6 things like that.

7 We have not talked to Romeo or Iacovo. I believe
8 Iacovo reached out and said something similar, that he had not
9 talked to Mr. Purpura. So we were -- again, we didn't want to
10 be the first -- sort of the first contacts with these folks.
11 And that's kind of why, you know, another sort of reason why we
12 think counsel is appropriate to kind of help them navigate
13 whether they want to talk to somebody, who they want to talk
14 to, under what circumstances, because we don't -- we don't want
15 to be accused of chilling their right to a defense by the
16 accusation that, you know, we said something that made them not
17 want to testify or -- 'cause that's what they're saying, that
18 they don't want to testify. And so they're coming us to, I
19 think, trying to say, Well, how do we not testify?

20 And I'm very --

21 **MR. PURPURA:** If you haven't talked to them, how do
22 you know that?

23 **MR. WISE:** Because they're telling -- they're saying
24 to John. We're not interacting with them.

25 **MR. PURPURA:** You mean the assistants? As assistants,

1 you have not talked to them?

2 **MR. WISE:** Right. And they haven't been interviewed.
3 They're leaving like messages and reaching out and saying, We
4 don't want to do this, and we don't know what we're supposed to
5 do.

6 **THE COURT:** Okay.

7 **MR. PURPURA:** And in all truth, you can't blame the
8 Baltimore City police officer for having some concern about
9 coming in to be a witness for the defense in this case. And I
10 understand that's a practical concern. They don't want their
11 name associated with it. I understand that as well.

12 But I don't believe that any of them have any
13 Fifth Amendment issues in this particular case. And if the
14 Government does feel there's an issue based on a very extensive
15 investigation, a good investigation, then they should let the
16 Court and us know and then we can address the issue.

17 **MR. WISE:** We've already done that.

18 **THE COURT:** They've done that.

19 **MR. PURPURA:** But there are no --

20 **THE COURT:** They've --

21 **MR. PURPURA:** I mean, they haven't said anything --
22 well, maybe not --

23 **THE COURT:** This is why I think we need to just talk
24 about this a little bit more rather than just standing up here
25 at the bench.

1 So 9:30 tomorrow. Can you all come to the office at
2 9:30 tomorrow?

3 **MR. WISE:** Yes.

4 **MR. NIETO:** And, Your Honor, only because we're here,
5 if the Government could tell us who they anticipate calling
6 tomorrow.

7 **THE COURT:** The next witness?

8 **MR. NIETO:** Yes; just so we have a general idea.

9 **MR. WISE:** Sure. So I think tomorrow -- and I don't
10 know the order. We'll send a follow-up e-mail. We didn't do
11 that last night, because we said it in court, but I should
12 have. It will be Stepp, Hamilton, Summerville.

13 **MR. HINES:** Adam and Thompson.

14 **MR. WISE:** Right, which are both related to
15 Summerville.

16 **MR. HINES:** Santiful, Anderson, Swinton.

17 **MR. WISE:** Who are just ECU witnesses. They're just
18 like property custodians.

19 **MR. HINES:** Griffin, Irby.

20 **MR. WISE:** And they're related to Griffin or Irby is
21 related to Griffin.

22 **THE COURT:** If we get through that many.

23 **MR. WISE:** Yeah. Well, we're going to --

24 **MR. NIETO:** I appreciate that. Thank you. That's
25 good. That's very helpful to know.

1 **THE COURT:** All right. And you'll do a follow-up
2 e-mail just to confirm that now you've got an idea, and
3 we'll --

4 **MR. NIETO:** 9:30 tomorrow morning?

5 **THE COURT:** 9:30 tomorrow morning in chambers. All
6 right. And you'll confirm with Mr. Armstrong when he can come
7 back.

8 **MR. WISE:** Yes.

9 **THE COURT:** All right. Thank you.

10 **MR. WISE:** Oh, Stevenson, I'll send an e-mail, too.
11 Stevenson.)

12 (Bench conference concluded.)

13 **THE COURT:** All right. We can adjourn.

14 (Court adjourned at 5:08 p.m.)
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I, Douglas J. Zweizig, RDR, CRR, do hereby certify that the foregoing is a correct transcript from the stenographic record of proceedings in the above-entitled matter.

/s/

Douglas J. Zweizig, RDR, CRR
Registered Diplomate Reporter
Certified Realtime Reporter
Federal Official Court Reporter
DATE: August 15, 2018

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