

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
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.)	

Tuesday, January 30, 2018
Courtroom 1A
Baltimore, Maryland

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

VOLUME IV - EXCERPT
TESTIMONY OF HERBERT TATE

For the Plaintiff:

Leo J. Wise, Esquire
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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

(3:03 p.m.)

(Excerpted as follows:

THE COURT: Mr. Wise.

MR. WISE: United States calls Herbert Tate.

THE COURT: Okay.

THE CLERK: Please raise your right hand.

HERBERT TATE, GOVERNMENT'S WITNESS, SWORN.

THE CLERK: Please be seated.

Please speak directly into the microphone. State your full name for the record and spell your last name, please.

THE WITNESS: Herbert Tate, T-A-T-E.

THE CLERK: Thank you.

Mr. Wise, the document is on the witness stand.

MR. WISE: Oh, sure.

THE CLERK: Thank you.

Thank you, Mr. Tate.

DIRECT EXAMINATION

BY MR. WISE:

Q. Good afternoon, Mr. Tate.

A. Good afternoon.

Q. Without giving us your house number, your actual street address, can you tell the members of the jury where you live.

A. Anne Arundel County.

Q. And where did you grow up?

~~TATE~~ ~~DIRECT~~

1 A. Baltimore City.

2 Q. And how long have you lived in Anne Arundel County?

3 A. Two years.

4 Q. How old are you, Mr. Tate?

5 A. 36.

6 Q. And if you could move forward a little bit just so the
7 microphone's -- I don't want you to have to sort of crane over.
8 If you'd just move your chair up to be a little closer to the
9 mic and it will be able to pick you up.

10 A. (Witness complies.)

11 Q. Thanks.

12 What do you do for a living, Mr. Tate?

13 A. HVAC.

14 Q. What does HVAC stand for?

15 A. Heating, air conditioning, and ventilation.

16 Q. And how long have you worked in HVAC?

17 A. 21 years.

18 Q. What kind of training or education do you have in that
19 area?

20 A. I have my master HVAC license, and I have my journeyman's.

21 Q. And where do you work doing HVAC work?

22 A. Now I work for a realty company.

23 Q. How long have you worked for that realty company?

24 A. A year and three months.

25 Q. And what did you do before that?

~~TATE~~ ~~DIRECT~~

1 **A.** The same thing.

2 **Q.** Different company, though?

3 **A.** Yes.

4 **Q.** Okay. How far did you go in school? You mentioned your
5 professional certifications, but how far did you go in school?

6 **A.** I have a high school diploma and some college.

7 **Q.** Now, I'm going to be asking you some questions, Mr. Tate,
8 about November the 27th of 2015; okay?

9 **A.** Okay.

10 **Q.** And do you remember what happened on that day?

11 **A.** Yes.

12 **Q.** And have you previously testified about what happened on
13 that day in the grand jury that investigated this case?

14 **A.** Yes.

15 **Q.** And to be clear, at the time of your grand jury testimony,
16 did you have what's referred to as immunity?

17 **A.** Yes.

18 **Q.** And do you have immunity today?

19 **A.** Yes.

20 **Q.** And tell the members of the jury what you understand that
21 to mean.

22 **A.** Speaking on the case that happened, I can't get in no more
23 trouble than what I had got in.

24 **Q.** And what's your -- what obligations do you have? What do
25 you need to do?

~~DATE~~ ~~DIRECT~~

1 A. To tell the truth.

2 Q. And what happens if you don't tell the truth?

3 A. I can go to jail for an offense that has nothing to do
4 with what I had immunity for.

5 Q. Right. And for perjury?

6 A. Right.

7 Q. Now, at the time of your grand jury testimony, were you
8 facing any charges for what happened on November the 27th of
9 2015?

10 A. No.

11 Q. Had the case against you been dismissed before that?

12 A. Yes.

13 Q. And are you facing any charges for what happened on
14 November the 27th of 2015 today?

15 A. No.

16 Q. And was that a state case or a federal case?

17 A. State.

18 Q. How long before you testified in the grand jury had that
19 case been dismissed?

20 A. It was March, I believe, of 2015.

21 Q. All right.

22 A. I believe.

23 Q. Was it March of 2016?

24 A. '16, yeah, '16.

25 Q. That's when it was dismissed?

~~TATE~~ ~~DIRECT~~

1 A. Right.

2 Q. And it was dismissed by the Baltimore City State's
3 Attorney's Office?

4 A. Yes.

5 Q. Did you come to the FBI in this case, or did they come to
6 you?

7 A. They sought me out.

8 Q. Do you know how they found you, how they knew to come and
9 talk to you?

10 A. From the conversation I was having on the phone.

11 Q. And what conversation was that that you were having on the
12 phone?

13 A. Explaining to my fiancée what I had got in trouble -- what
14 I had got locked up for and what happened that day, on the
15 27th.

16 Q. And when did you -- where were you when you explained that
17 to your fiancée?

18 A. In Central Booking.

19 Q. And was this a recorded call?

20 A. Yes.

21 Q. And did you later learn that the FBI had heard that call
22 and then they came to ask you about what you said?

23 A. Yes.

24 Q. Okay. Now, my questions are really all going to be about
25 November 27th, 2015, Mr. Tate, so why don't you start by

~~DATE~~ ~~DIRECT~~

1 telling the jury what you were doing that day.

2 **A.** I recall walking up the street, and a patrol car was
3 coming behind me with Officer Hersl and two of his co-workers.
4 And he told one of the co-workers, "Jump out," and they grabbed
5 me.

6 **Q.** And I'll just interrupt you for a second.

7 I want to show you a couple of exhibits. The first one is
8 HT-8. Is this a map that shows where you were on
9 November 27th?

10 **A.** Yes.

11 **Q.** So this is -- you were on Robb Street?

12 **A.** Yes.

13 **Q.** Okay. And where -- that screen you can actually touch it,
14 and it will make a little arrow or a mark.

15 Where were you walking when you said Officer Hersl and two
16 other officers, I guess, came up on you?

17 **A.** About right -- about right there (indicating).

18 **Q.** Where that little --

19 **A.** Pink dot.

20 **Q.** Pink dot. Okay. Could you make it slightly bigger just
21 so we can see where you're --

22 **A.** (Witness complies.)

23 **Q.** All right. And which way were you walking?

24 **A.** Northbound.

25 **Q.** All right. So you were headed in that direction

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1 (indicating)?

2 **A.** Yes.

3 **Q.** And you said they -- from what direction did they come,
4 did Officer Hersl and the other two officers come?

5 **A.** From my rear, from the -- from my rear.

6 **Q.** From your rear?

7 **A.** Yes.

8 **Q.** Okay. And did you see them coming or were they -- did
9 they come from behind?

10 **A.** From behind me, from behind me.

11 **Q.** Okay. And what kind of street is Robb Street?

12 **A.** What do you mean?

13 **Q.** Is it a one-way street or a two-way street?

14 **A.** Oh. It's a two-way street -- I mean it's a one-way
15 street, but traffic can go in and out.

16 **Q.** I see. And does it dead-end up here (indicating)?

17 **A.** Yes.

18 **Q.** All right. And I'm going to ask you some specific
19 questions about once they stop you, but why were you on
20 Robb Street on November 27th of 2015?

21 **A.** Just hanging out around the holiday time. Around the
22 holiday time, just hanging out.

23 **Q.** Had you finished work for the day?

24 **A.** Yes.

25 **Q.** What time of day was this?

~~PAGE~~ ~~DIRECT~~

1 **A.** This was close to 5 o'clock and I got off about 3 o'clock
2 that day.

3 **Q.** What kind of work as an HVAC -- did you say an HVAC
4 engineer or how do you refer to yourself?

5 **A.** Technician.

6 **Q.** Technician. So as an HVAC technician, do you work a shift
7 or what kind of work -- how does your work schedule?

8 **A.** It can be a shift or you can just have general work order
9 tickets that day for service calls.

10 **Q.** What were you doing on November 27th?

11 **A.** I had service calls, so it wasn't a complete shift.

12 **Q.** So you said by about 3 o'clock, were you finished with
13 your service calls?

14 **A.** Yes.

15 **Q.** Did you grow up in this neighborhood?

16 **A.** Yes.

17 **Q.** And what were your connect -- did you live in this
18 neighborhood in November of 2015?

19 **A.** No.

20 **Q.** So what were your connections to this neighborhood in
21 November of 2015? What brought you there?

22 **A.** Just to hang out with some old friends, see some old
23 people from the neighborhood, some of the kids that I was
24 coaching basketball with at the recreation center around the
25 neighborhood.

~~PAGE~~ ~~DIRECT~~

1 Q. So did you coach basketball at a neighborhood recreation
2 center?

3 A. Yes.

4 Q. And did some of those kids live in this neighborhood?

5 A. Yes.

6 Q. And then you -- I think you said some of your friends from
7 growing up there still live there; right?

8 A. Right.

9 Q. Okay. And now you started to say -- you started to
10 describe how as you were walking north on Robb Street,
11 Officer Hersl and two other officers, you said, pulled up on
12 you?

13 A. Yes -- well, pulled up and stopped right where I was at
14 and jumped out.

15 Q. And do you see Officer Hersl in the courtroom?

16 A. Vaguely. Second from the end of the table over there.

17 **MR. PURPURA:** We'll stipulate that Mr. Hersl is
18 sitting next to counsel.

19 **THE COURT:** Thank you.

20 **BY MR. WISE:**

21 Q. And, again, what were you doing when they pulled up?

22 A. I just stopped.

23 Q. Okay.

24 A. I was just walking.

25 Q. All right.

~~PAGE DIRECT~~

1 **A.** And I stopped once they started to get out.

2 **Q.** And then you started to say that Officer Hersl told one of
3 the other officers to grab you?

4 **A.** Yes; Officer Fassl.

5 **Q.** And did he?

6 **A.** Yeah. He got out the backseat, and I just stopped. And
7 he grabbed me and started searching me.

8 **Q.** And did he find anything on you?

9 **A.** Just money, pay stubs, and some receipts from some bills I
10 had paid.

11 **Q.** Now, when he -- when he was searching you, did you give
12 him consent to search you? Did he -- did you say, "You can
13 search me"?

14 **A.** No.

15 **Q.** Why did you stop?

16 **A.** Because they jumped out aggressive. I mean, they known
17 for being aggressive, so I ain't want to get in no trouble or
18 get beat up. So it was just stop. I wasn't in the wrong or
19 doing nothin'.

20 **Q.** Okay. And you just said you weren't in the wrong; you
21 weren't doing nothin'. Had you been doing any -- had you been
22 selling drugs before that?

23 **A.** Naw. I had work clothes on, like.

24 **Q.** Okay. Did Officer Fassl find any drugs on you?

25 **A.** No.

~~PAGE DIRECT~~

1 Q. How were they dressed, if you remember?

2 A. I'm not -- I know they had on like vests and, like,
3 regular clothes, plainclothes with like vests.

4 Q. Okay.

5 A. Vests on.

6 Q. So you knew they were police by the vests?

7 A. I knew they were police by who they -- the voices I heard
8 and seeing how they was dressed when I got out -- when they got
9 out.

10 Q. Okay. Had you -- had you dealt with Officer Hersl before?

11 A. A couple days before that, we had a little incident, but
12 it wasn't as "extenuous" as this one was.

13 Q. What was the incident with Officer Hersl a couple days
14 before?

15 A. Something similar, but it just -- they stopped me. He was
16 walking up and down the street looking for stuff. The other
17 officer, Fassl, was talking to me. He basically said -- wrote
18 down on the piece of paper, "This your warning. Next time I
19 see you, you're going to jail."

20 Q. Who said that to you?

21 A. Hersl.

22 Q. He said, "Next time I see you, you're going to jail"?

23 A. Yes.

24 Q. Were you doing anything that day?

25 A. No, I wasn't.

~~PAGE DIRECT~~

1 Q. Anything illegal?

2 A. No. This incident lasted every bit of about five, six
3 minutes.

4 Q. And you said this was just a couple of days before the
5 27th?

6 A. Yes.

7 Q. Were you searched when Officer Hersl stopped you a couple
8 days before the 27th?

9 A. Yeah. He searched me, told me, "Sit down." He told Fassl
10 to tell me take -- well, one of them told me to take my shoes
11 off. Took my shoes off.

12 After that I stood back up. He, like, unbuttoned the
13 front of my pants, looked around my waistline, looked around my
14 pants, and just told me go ahead about my business once they
15 ain't find nothing that time.

16 Q. Did he go in your mouth?

17 A. Yeah. He grabbed my mouth (indicating), opened my mouth,
18 told me put my tongue out.

19 Q. And if I didn't ask you this already, did Officer Hersl
20 find anything after he went in your mouth, went down your
21 pants?

22 A. No.

23 Q. And where did all this happen? Where was this happening?

24 A. This first incident happened in the same block, about
25 right here (indicating).

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1 Q. Okay. But out on the street?

2 A. Yes.

3 Q. Okay. And I think you testified that at the end of it,
4 you said he wrote something down on a piece of paper?

5 A. Yeah. Like, "This is your warning," like a warning piece
6 of paper.

7 Q. All right. Warning for what?

8 A. I don't know. I really wasn't even really paying him no
9 attention.

10 Q. Okay.

11 A. But it was the day's date on the white piece of paper.

12 Q. And he said if he saw you again, he was going to lock you
13 up?

14 A. Right.

15 Q. All right. And then moving ahead to two days or a couple
16 days later, to the 27th, after Officer Fassl searched you, you
17 said he found -- you had some money on you; right?

18 A. Yes.

19 Q. And a pay stub?

20 A. Money, pay stub, a receipt from a daycare bill, and it was
21 probably another miscellaneous food receipt or something like
22 that.

23 Q. Did you have a child in daycare?

24 A. Two.

25 Q. Two. Were you paying -- were you paying for the daycare?

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1 A. Yes.

2 Q. Now, where -- how much money did you have? You said you
3 had -- that you had money in your pocket that Officer Fassl
4 took. How much money did you have?

5 A. The second time I had about 530-something dollars and some
6 change, I believe.

7 Q. And where had that money come from?

8 A. My paycheck.

9 Q. And how much before the 27th had you gotten paid?

10 A. It was \$1,163 and some cents.

11 Q. And for how long -- do you get paid every --

12 A. Biweekly.

13 Q. Biweekly, so every two weeks?

14 A. Yes.

15 Q. So that was your biweekly paycheck, \$1,163?

16 A. Yes.

17 Q. And when had you gotten paid?

18 A. That day.

19 Q. Okay.

20 A. Friday.

21 Q. Friday?

22 A. Yes.

23 Q. And what had you done with the paycheck?

24 A. Paid a bill, got some food, got some gas. Just about it.

25 Nothin' --

1 Q. What was the bill you paid?

2 A. Daycare, I believe.

3 Q. Okay. So that was the receipt you mentioned you might
4 have had?

5 A. Right.

6 Q. And then what were you going to -- and you said after
7 those expenses from the \$1,163, you had about \$530 left in your
8 pocket?

9 A. And some change, some cents.

10 Q. And some change.

11 And what were you going to do with that money?

12 A. I was just -- so the rest of it for bills and to get
13 through the week, get through the next two weeks.

14 Q. Okay. Had you paid your rent yet?

15 A. No. That was coming up. I had to pay it before the 5th,
16 so that was a portion towards it. Some of that was a portion
17 towards the rent.

18 Q. All right. Now, did Officer Fassl put handcuffs on you
19 before he searched you, or did he search you without handcuffs
20 on?

21 A. The initial pat-down I didn't have cuffs on; but probably
22 a few minutes later, once they told me sit down, I had some
23 cuffs.

24 Q. Who told you to sit down?

25 A. I believe it was Burns told him to "sit him down" and

~~PAGE~~ ~~DIRECT~~

1 watch me. They sat me on some steps.

2 Q. And that's -- so you've now -- those are -- is he the
3 third officer? You mentioned it was Hersl and two other
4 officers, and you've now mentioned Fassl and Burns. Are those
5 the two other officers?

6 A. Correct.

7 Q. Who put the handcuffs on you?

8 A. I believe Officer Fassl.

9 Q. And then you said they told you to sit down?

10 A. Right.

11 Q. I know you have handcuffs on, so this may seem like a dumb
12 question; but did you feel like you could leave at this point?

13 A. No.

14 Q. What did you think would happen if you had resisted or
15 tried to leave?

16 A. I'm not even sure. No telling.

17 Q. Were you fearful?

18 A. Yeah. I just knew I wasn't going to just try to walk
19 away.

20 Q. Right.

21 A. That wouldn't happen.

22 Q. Now, once you were in cuffs and you said they told you to
23 sit down -- did they tell you to sit down on the curb or sit
24 down on the stoop or something?

25 A. Right.

~~PAGE DIRECT~~

1 Q. What did Defendant Hersl do then?

2 A. Well, he wasn't, like, there. He -- once he got out the
3 car, he just went and started looking for stuff, I guess, like
4 vacant homes.

5 Q. What did you see him doing?

6 A. Go into vacant homes, looking into steps, pulling steps
7 apart, stuff like that. I mean, those things and walking up --
8 back up and down the street.

9 Q. Did you know what he was looking for?

10 A. Not at the moment.

11 Q. And you testified that they hadn't found anything on you;
12 right?

13 A. No.

14 Q. Where did -- you said Defendant Hersl started looking in
15 the steps and in vacant homes. Did he ultimately go somewhere
16 on Robb Street?

17 A. Yeah. He went, like, up to the top of that dead-end into
18 the alley, to the right.

19 Q. So the alley sort of over here (indicating)?

20 A. Yes.

21 Q. And then was he out of sight? You couldn't see him
22 anymore?

23 A. Right.

24 Q. How long was he up in that alley?

25 A. I know it's dark when he came back down, probably about

~~PAGE~~ ~~DIRECT~~

1 seven to ten minutes.

2 Q. Okay.

3 A. Maybe.

4 Q. And did he have anything in his hands when he came out of
5 the alley?

6 A. No.

7 Q. So as of the time he came back, did you know why you had
8 been arrested?

9 A. I ain't know nothin' at that time.

10 Q. Did anyone tell you?

11 A. Officer Fassl was just like, "Man, just be cool. Just be
12 quiet."

13 Q. How did he treat you? Did he treat you --

14 A. Cool, respect.

15 Q. All right. Did you ask what you were being arrested for?

16 A. I asked a couple times, but no one said nothin' --

17 Q. Did you ever --

18 A. -- at the moment.

19 Q. Did you ask Officer Hersl when he came back out of the
20 alley?

21 A. I don't remember saying nothin' to him. I was talking to
22 Fassl for the first few minutes, and then I said something to
23 Burns. And I think maybe five minutes before I left, I was
24 talking to Officer Hersl. And I asked him what he was lock --
25 what they was locking me up for.

~~PAGE DIRECT~~

1 I think -- I believe it was Burns that said, "Blue and
2 whites."

3 I asked, "What are those?" And I was like -- I asked -- I
4 know I asked, "Could I see it?"

5 And Officer Hersl stated, "I don't have to show you an
6 MF'ing thing. We just got to prove it in court."

7 **Q.** So you asked if you could see the blue and whites that
8 they said they had, and Officer Hersl said he doesn't have to
9 show you an MF'ing thing?

10 **A.** Correct.

11 **Q.** Do you know what blue and whites are?

12 **A.** I mean, now I know what they was. It was heroin.

13 **Q.** Did you know at the time?

14 **A.** No.

15 **Q.** Did you ever sell heroin?

16 **A.** No.

17 **Q.** When you were on the street walking when they pulled up on
18 you, did you have anything in your hand?

19 **A.** A cup.

20 **Q.** A cup?

21 **A.** Yes.

22 **Q.** What was in the cup?

23 **A.** Wine maybe, beer, something.

24 **Q.** Okay. Did you have a bag in your hand?

25 **A.** No.

~~PAGE DIRECT~~

1 Q. Before they pulled up on you, you said you were heading
2 north; right?

3 A. Right.

4 Q. And ultimately did you -- did you see your -- the charging
5 papers in this case?

6 A. Once I was arrested, they gave 'em to me at
7 Central Booking. Yes, I did.

8 Q. And what did the -- I guess what did Officer Hersl claim
9 to have seen you -- or where did he claim to have seen you
10 coming from?

11 A. Up to the retain -- he said he seen me coming from the
12 retaining wall, placing a black bag or a white bag, I believe,
13 behind the wall somewhere.

14 Q. Did you do any of that?

15 A. I wasn't nowhere near that wall.

16 Q. 'Cause the wall's up here (indicating); right?

17 A. Right.

18 Q. And they grabbed you when you were here (indicating);
19 right?

20 A. Right.

21 Q. And I guess Robb Street has this sort of bend in the road;
22 right?

23 A. Correct.

24 Q. And so if we look at HT-7, here's a picture. Is this the
25 sort of head of Robb Street?

~~PAGE~~ ~~DIRECT~~

1 **A.** When you turning in, yes.

2 **Q.** So this is sort of down here (indicating)?

3 **A.** Right.

4 **Q.** And so what happens to the road fairly quickly?

5 **A.** Sharp right turn.

6 **Q.** Right. And have you walked on -- have you been on
7 Robb Street many times?

8 **A.** Yes.

9 **Q.** Can you see that retaining wall when you turn onto
10 Robb Street?

11 **A.** Once you make that right turn, you can.

12 **Q.** But what about when you're -- when you turn onto it?

13 **A.** No.

14 **Q.** Okay. Now, you testified that Hersl came back from the
15 alley. You asked him what you were being charged with. He
16 made the statement you just told us about.

17 At some point did a transport van show up to take you
18 either to the District or Central Booking?

19 **A.** Yes.

20 **Q.** And at that point where was your money? Where was the
21 money that had been taken out of your pocket?

22 **A.** In Officer Fassl's hand.

23 **Q.** And what did Officer Fassl do with that money?

24 **A.** He asked Hersl, What -- "What am I doing with the money?"

25 And he told him to keep it.

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1 Q. So Hersl told Fassl to keep it?

2 A. Right.

3 Q. Did you see if Fassl gave it to Hersl?

4 A. No.

5 Q. All right. So the last you saw it, it was with Fassl?

6 A. Right.

7 Q. Okay. Did you say anything about your money?

8 A. Yeah, I did. I asked, "What's going to happen with my
9 money?" And I asked can they at least count my money.

10 And once I said that, Officer Burns, I guess it ticked
11 something in him and he got a little bit belligerent on me
12 making that statement.

13 Q. And what did he say?

14 A. "Nobody's going to take your f'ing money. I make a
15 hundred-and-something-odd-thousand dollars a year. I don't
16 need your f'ing money."

17 Q. Why did you ask -- why did you ask them to count it?

18 A. 'Cause I wanted to know what was going in my property, and
19 officers are known for stealing.

20 Q. Okay. Did they count it?

21 A. Not in front of me.

22 Q. You testified that you saw your charge papers at some
23 point. Was there any money listed on your charge papers?

24 A. \$216 and I think some cents.

25 Q. And was that what had been taken from you?

~~TATE DIRECT~~

1 A. That wasn't what I had in my pocket.

2 Q. And what had been taken from you out of your pocket?

3 A. 530-something dollars and some change.

4 Q. And when you were released, were you given back -- well,
5 were you given back the difference between the \$530 the 216?

6 A. No. I was released -- I think I had 37 cents in my pocket
7 they released me with.

8 Q. So I'm going to show you what's been marked HT-2. This
9 says, "Personal Property Receipt, Herbert Tate"; right?

10 A. Yes.

11 Q. And that's a picture of you at the time (indicating)?

12 A. Right.

13 Q. And it says that cash property, you were given about
14 91 cents.

15 A. Yes.

16 Q. Right?

17 A. Right.

18 Q. Okay. So do you know what happened to the money, the
19 difference between the 530 that was taken from you and the 216
20 that was at least reported to have been turned in to the
21 Evidence Control Unit?

22 A. Not at all.

23 Q. Did you ever get that back?

24 A. No.

25 Q. You testified your state case was dismissed; right?

~~TATE~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** Did you ever get your \$216 back?

3 **A.** No.

4 **MR. WISE:** Nothing further.

5 **THE COURT:** All right. Thank you.

6 We'll take the mid-afternoon recess and then continue.

7 (Jury left the courtroom at 3:28 p.m.)

8 (Recess taken.)

9 **THE COURT:** Be seated, please.

10 Can I see counsel at the bench for just a minute.

11 (Bench conference on the record:

12 **THE COURT:** Another question from a different juror.

13 "Were Burns, Fassl, and Hersl armed when they stopped
14 and arrested Herbert Tate?"

15 I assume that question can be answered in the course
16 of the testimony.

17 **MR. WISE:** Yes.)

18 (Bench conference concluded.)

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

20 (Jury entered the courtroom at 3:47 p.m.)

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

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

23 **THE COURT:** Mr. Rafter.

24 **MR. RAFTER:** Thank you, Your Honor.

25

CROSS-EXAMINATION

BY MR. RAFTER:

Q. Good afternoon, Mr. Tate.

A. Good afternoon.

Q. I have a few questions for you. I'll be pretty brief, but I do have a few questions.

You grew up in this neighborhood, right, around Robb Street?

A. Yes.

Q. So you're familiar with Robb Street?

A. Right.

Q. Okay. I'm going to show you what's already been introduced as Government's HT-8.

And you recognize that area; correct?

A. Correct.

Q. Okay. And I guess you testified, without pointing out, you're about halfway down the block when you encountered the police; correct?

A. Yes.

Q. Okay. Now, this is a dead-end street; correct?

A. Correct.

Q. And there's a wall at the end of the street?

A. Correct.

Q. Okay. And you're familiar with that area?

A. Correct.

~~DATE~~ ~~CROSS~~

1 **MR. RAFTER:** Your Honor, if I may approach the
2 witness.

3 **BY MR. RAFTER:**

4 **Q.** I want to show you a few photographs and ask you -- 14,
5 15, and 16 from Hersl, ask you if you can identify those.

6 **THE CLERK:** Mr. Rafter, is your microphone on?

7 **THE WITNESS:** You talking about all of 'em?

8 **BY MR. RAFTER:**

9 **Q.** Yeah; just all those three.

10 **A.** Yes, I do.

11 **Q.** Okay. And what street is that?

12 **A.** That's Robb Street.

13 **Q.** All three of them?

14 **A.** Yes.

15 **Q.** Okay. I'll show you what's been marked as State's 14 --

16 **MR. PURPURA:** Not "State."

17 **THE COURT:** No.

18 **BY MR. RAFTER:**

19 **Q.** Excuse me.

20 -- Hersl 14.

21 And what is that? Is that the east side of the street?

22 **A.** Yes.

23 **Q.** And that's the -- where you encountered Mr. Hersl?

24 **A.** On that side of the street, yes.

25 **Q.** Okay. About how far down? Which house were you in front

~~DATE~~ ~~CROSS~~

1 of?

2 **A.** None of these houses right here (indicating).

3 **Q.** Okay. So further down the block, is that what you're
4 saying?

5 **A.** Yes.

6 **Q.** Okay. And the wall is up top; correct?

7 **A.** Correct.

8 **Q.** That's the dead-end area?

9 **A.** Yes.

10 **Q.** Okay. And 15. Now, that's the end of Robb Street;
11 correct?

12 **A.** On the left side, yes.

13 **Q.** Okay. That's -- that's gonna be the west side of the
14 street; right?

15 **A.** Facing the west side.

16 **Q.** So that's the opposite side of the street from where you
17 encountered the police?

18 **A.** Correct.

19 **Q.** And, in fact, there's a pathway that leads to the other
20 block; correct?

21 **A.** Correct.

22 **Q.** Okay. So if somebody was up there, they can cut to the
23 next street, go into the west side of the street?

24 **A.** Yes.

25 **Q.** Okay. And I will show you Number 16 from Hersl. And

~~TATE~~ ~~CROSS~~

1 that's the top of the street as well; right?

2 **A.** Right.

3 **Q.** And the wall's in that scraggly brush there, things like
4 that?

5 **A.** Yes.

6 **Q.** Is there a wall there?

7 And on the east side of the street, there's like a
8 cut-through; correct?

9 **A.** Yes.

10 **Q.** Like a cut, so that cuts away to another block as well?

11 **A.** Yes.

12 **Q.** So if somebody was up at the top of this street, they
13 could basically leave Robb Street real quick by going either to
14 the east side or the west side through the cut; right?

15 **A.** Correct.

16 **Q.** And you lived in that area; correct?

17 **A.** Yes. Not on Robb Street, no.

18 **Q.** Okay. But you know Robb Street basically is an open-air
19 drug market?

20 **A.** That's what they say.

21 **Q.** Okay. And it is; correct?

22 **A.** I don't know.

23 **Q.** You grew up there.

24 **A.** Right. I never seen no one selling drugs myself.

25 **Q.** Have you ever sold -- you said -- the prosecutor asked you

~~TATE~~ ~~CROSS~~

1 if you had never sold heroin; is that correct?

2 **A.** Correct.

3 **Q.** Have you ever sold cocaine or marijuana?

4 **A.** Yes.

5 **Q.** Okay. When was that?

6 **A.** When I was in, like, high school, maybe.

7 **Q.** Okay. How about in 2003?

8 **A.** No.

9 **Q.** You were never convicted of drug distribution?

10 **A.** I took PBJ for it. Yes, I did.

11 **Q.** Okay. That was back in 2003?

12 **A.** Correct.

13 **Q.** And that was a felony conviction?

14 **A.** PBJ.

15 **Q.** Right. But it was a felony count; correct?

16 **A.** I guess.

17 **Q.** Okay. So you have dealt drugs before?

18 **A.** Yes.

19 **THE CLERK:** Sir, can you slide up, please. Thank you.

20 **BY MR. RAFTER:**

21 **Q.** Now, Mr. Tate, let's go through this. The first time you
22 talked to the Government lawyers was December 19th; correct?

23 **A.** Correct.

24 **Q.** And that was at your house?

25 **A.** Yes.

~~DATE~~ ~~CROSS~~

1 Q. And the FBI came to see you?

2 A. Yes.

3 Q. Task Force Agent Sieracki (indicating)?

4 A. Yes.

5 Q. Okay. And I guess it was task force agent Smith as well;
6 right?

7 A. Correct.

8 Q. And they interviewed you about this?

9 A. Yes.

10 Q. And then the next time you met with the entire Government
11 team, isn't that correct, the two prosecutors (indicating),
12 when you came back here in January; right?

13 A. When you refer to the entire team, that's --

14 Q. Prosecution.

15 A. -- three people. I met with three people the last time --

16 Q. Who did you meet with?

17 A. -- I believe.

18 The gentleman --

19 Q. Mr. Wise (indicating)?

20 A. Yes.

21 **THE COURT:** Wait. Again, please --

22 **MR. RAFTER:** I'm sorry, Your Honor.

23 **THE COURT:** -- wait until he finishes.

24 **BY MR. RAFTER:**

25 Q. Did you meet with Mr. Wise (indicating)?

~~DATE~~ ~~CROSS~~

1 A. Yes.

2 Q. Mr. Hines (indicating)?

3 A. Yes.

4 Q. Okay. FBI agent (indicating)?

5 A. No.

6 Q. Okay.

7 A. She just was in transportation, maybe. I seen her face
8 before.

9 Q. All right. But you met with them before you went to the
10 grand jury; correct?

11 A. Yes.

12 Q. And you went over your story with them; right?

13 A. Yes.

14 Q. And then you went and testified before the grand jury that
15 same day?

16 A. Right.

17 Q. Okay. Now, this is a pretty traumatic incident to you;
18 correct?

19 A. Yes.

20 Q. Okay. 'Cause you're basically saying that you're an
21 innocent guy and just got basically locked up for no reason;
22 correct?

23 A. Correct.

24 Q. You got a pretty good memory of what happened that day?

25 A. Right.

~~TATE~~ ~~CROSS~~

1 Q. Okay. So that when you testified that -- Hersl saw you
2 two days before; correct?

3 A. Correct.

4 Q. Basically, just sort of searched you, shook you down,
5 didn't find anything, gave you a paper, and then said, "If I
6 find you again, I'm going to lock you up"; correct?

7 A. Correct.

8 Q. Okay. And -- now, when you were interviewed back on -- do
9 you recall that when you were interviewed by Task Force
10 Agent Sieracki (indicating) back in December?

11 A. Yes.

12 Q. Okay. Back in December you basically said that Tate
13 stopped the vehicle and removed -- excuse me, Hersl stopped the
14 vehicle and removed approximately \$600 and a pay stub from you.

15 Now, that's not what you testified to; correct?

16 A. Which time are you referring to?

17 Q. This is the -- before you got arrested.

18 A. Yes.

19 Q. I'm going chronologically.

20 A. Okay.

21 Q. In order, basically.

22 A. Yeah.

23 Q. So the first time -- you testified here that they didn't
24 find anything. That's what you said on the stand. They just
25 shook you down and gave you this piece of paper and said,

~~TATE~~ ~~CROSS~~

1 "Don't come back"; correct?

2 **A.** Correct.

3 **Q.** Okay. But you didn't tell that to the head task force
4 agent, did you?

5 **A.** I don't recall.

6 **Q.** Okay. Let me see if I can refresh your recollection.

7 I'm going to show you what's been -- what will be marked
8 as Hersl 17 and ask if you can just read through that
9 (handing).

10 **THE COURT:** And that's for identification?

11 **MR. RAFTER:** Yes, Your Honor.

12 **BY MR. RAFTER:**

13 **Q.** I'm going to direct your attention to this paragraph down
14 here.

15 **A.** I want to read all of it.

16 **Q.** Do you recognize that, Mr. Tate?

17 **A.** Yes.

18 **Q.** Okay. And is that your interview, the notes of your
19 interview on that date?

20 **A.** Yes.

21 **Q.** Okay. And it says -- I'm directing you to the third
22 paragraph.

23 **MR. WISE:** Your Honor, we object.

24 **THE WITNESS:** I wasn't finished reading.

25 **THE COURT:** Do you want to come up to the bench,

1 please.

2 **MR. WISE:** Yes.

3 (Bench conference on the record:

4 **MR. WISE:** What he's showing him is the FBI 302 from
5 his interview. He's never seen it before. He's now starting
6 to read to it -- to read to him from it. It's not a proper use
7 of it.

8 He can use it to refresh his memory if he claims to
9 forget something. He can ask him, "Did you tell the FBI X?
10 Did you tell them Y?" But he can't now read this FBI report
11 that he's never seen before into the record.

12 **MR. RAFTER:** I was trying to direct him to the third
13 paragraph where my questions were, Your Honor.

14 **THE COURT:** Sure. And if there's something in the
15 third paragraph that you now want to ask him about, you can ask
16 him whether, in reading that 302, you know, that -- those notes
17 from the FBI, does that refresh your recollection as to what
18 you said during the interview? Did you say X?

19 And that's fine. But I will sustain the objection as
20 far as reading the report into evidence.)

21 (Bench conference concluded.)

22 **THE COURT:** So we'll just rephrase that.

23 **MR. RAFTER:** Thank you, Your Honor.

24 **BY MR. RAFTER:**

25 **Q.** Have you had an opportunity to read that?

~~DATE~~ ~~CROSS~~

1 **A.** Yes.

2 **Q.** Okay. When you spoke to Task Force Agent Sieracki, did
3 you tell him that you had \$600 taken by Hersl?

4 **A.** Not -- not the first time, not the first incident; he did
5 not -- they didn't take nothin' from me. They put -- looked at
6 my stub, gave me my money, and sent me on my way the first
7 time.

8 **Q.** Okay. But he -- third paragraph, does that refresh your
9 recollection?

10 **MR. WISE:** Your Honor, objection. He said that's not
11 what he said. His memory isn't in need of refreshment.

12 **THE COURT:** Okay.

13 **BY MR. RAFTER:**

14 **Q.** Do you recall telling Task Force Sieracki [sic] about what
15 happened the first time?

16 **MR. WISE:** Asked and answered, Your Honor.

17 **THE COURT:** All right. Overruled. One more time.

18 **THE WITNESS:** Say it again.

19 **BY MR. RAFTER:**

20 **Q.** Do you remember telling the task force agent what happened
21 the first time you came in contact with Hersl?

22 **A.** Yeah. I remember -- remember some -- telling him some
23 things. I probably told him -- when more things got to my
24 mind, I told him that also.

25 **Q.** Okay. And didn't you tell him that you had money on you

~~DATE~~ ~~CROSS~~

1 and a pay stub?

2 **A.** I said I had money and a pay stub in my -- from my wallet,
3 yes, on me; correct.

4 **Q.** And that the detective gave that back to you; correct?

5 **A.** Yeah. They put it back that time, the first time.

6 **Q.** Okay. That was the first time.

7 **A.** Right.

8 **Q.** Okay. But you didn't testify to that today?

9 **A.** Okay.

10 **Q.** True?

11 **A.** I wasn't asked about that.

12 **MR. WISE:** He did testify to that.

13 **THE COURT:** The jury's recollection will control.

14 Next question.

15 **MR. RAFTER:** Thank you, Your Honor.

16 **BY MR. RAFTER:**

17 **Q.** Do you recall at that point in time when you were talking
18 with Task Force Agent Sieracki going into what happened on the
19 27th of November?

20 **A.** Yes, yes.

21 **Q.** Okay. And you explained to him that you were seated on
22 the porch of a vacant home; is that correct?

23 **A.** At -- initially, I was not on the step. That was -- they
24 had me standing like where the car pulled out at. In between
25 two cars I was standing. And then they told me to sit at the

~~DATE~~ ~~CROSS~~

1 bottom of the steps.

2 Q. Okay. But that's not what you told the agent, is it?

3 A. That's what happened, what I just told you.

4 Q. Okay. I'm just asking what you told the agent on the
5 first day.

6 A. I'm telling you what just happened -- what I just told you
7 is just what happened.

8 Q. Okay. That's fine. But I'm asking you what you told the
9 agent. Do you recall --

10 A. I don't recall.

11 Q. You don't recall that. Okay.

12 A. Right.

13 Q. Can you look at the last paragraph and see if that
14 refreshes your recollection.

15 A. (Reviews document.)

16 Yeah. That's --

17 Q. Does that help your memory?

18 A. Yeah.

19 Q. In fact, you told the agent you were sitting --

20 **MR. WISE:** Objection, Your Honor. He has to now ask
21 if he remembers.

22 **THE COURT:** Well, let him finish his question.

23 **BY MR. RAFTER:**

24 Q. Does that help your recollection?

25 A. Yes.

~~DATE~~ ~~CROSS~~

1 Q. Okay. Didn't you tell the agent that you were sitting on
2 the steps?

3 A. I told you that they told me to sit at the bottom of a
4 step. After he searched me, he put me on the bottom of a
5 step --

6 Q. Okay.

7 A. -- the bottom step of the steps.

8 Q. Okay. But that doesn't -- okay. You didn't tell the
9 agent that day, did you?

10 A. I don't -- I'm telling you what happened.

11 Q. I know, but you didn't tell the agent that on that date;
12 correct?

13 A. I'm telling you what happened that day.

14 **THE COURT:** I guess that you're not going to get
15 that --

16 **MR. RAFTER:** I get the idea. That's fine.

17 **BY MR. RAFTER:**

18 Q. Now, going further with what you told the task force agent
19 about what happened when you got arrested, do you remember
20 telling the task force agent who got out of the car to sort of
21 shake you down?

22 A. Which time, the 27th?

23 Q. The 27th.

24 A. Yes.

25 Q. And this is the interview with (indicating)?

~~DATE~~ ~~CROSS~~

1 A. Yes.

2 Q. Okay. And what did you tell the agent?

3 A. Hersl told Fassl, "Grab him." He searched me, said
4 something about your ass going to jail. He started going to
5 break up steps at vacant homes, trying to get into vacant
6 homes, looking for things, being loud and belligerent, going up
7 the street.

8 Q. Okay. And so that's what you told the agent back in
9 December?

10 A. Right.

11 Q. Okay. I'm going to ask you to turn to Page 2.

12 Are you on Page 2?

13 A. Yes.

14 Q. Okay. Can you just read that quickly.

15 **THE COURT:** To yourself. To yourself.

16 **BY MR. RAFTER:**

17 Q. To yourself.

18 A. (Witness complies.)

19 Q. Have you read that? It's just about the initial
20 confrontation with the police?

21 A. I'm done.

22 Q. Okay. In fact, didn't you tell Agent Sieracki -- does
23 that help your recollection?

24 A. I read it.

25 Q. Okay. Didn't you tell Agent Sieracki that Fassl didn't

1 come up to you but Hersl did?

2 **A.** No. Hersl was driving the car. He got out and
3 immediately started searching for things. Fassl got out and
4 started to contain me and search me.

5 He searched me. And then when he ain't find nothing,
6 Hersl came back down the street. They sat me back down on the
7 steps, and they were still looking for things.

8 **Q.** So you never told Agent Sieracki that Hersl came out and
9 grabbed you by the clothing and shook you down?

10 **A.** Hersl shook -- I mean Fassl shook me down.

11 **Q.** Did you tell the agent that Hersl --

12 **A.** I don't recall telling him that, but I remember Fassl
13 shook me down.

14 **Q.** Okay. So basically when -- do you recall telling
15 Agent Sieracki about visible injuries in your booking photo?

16 **A.** I mean, probably from like my shirt being grabbed like on
17 my neck --

18 **Q.** And that was when you --

19 **A.** -- and scratches.

20 **Q.** And that was when you said it was grabbed by Hersl;
21 correct?

22 **A.** I'm not sure.

23 **Q.** Okay. You're not sure. Does reading that --

24 **A.** I'm not sure if I said it was by Hersl.

25 **Q.** Okay. How about reading the report; does that help?

~~DATE~~ ~~CROSS~~

1 A. I'm reading. It's going to say the same thing.

2 Q. Up at the top?

3 A. Next question.

4 Q. No. You can answer my question.

5 THE COURT: All right. Well, which part do you want
6 him to read now?

7 BY MR. RAFTER:

8 Q. Just the top. You don't -- you don't recall telling
9 Agent Sieracki that Hersl's the one that got out of the car and
10 shook you by your work uniform; is that correct?

11 A. No. Fassl, I ain't -- I don't remember saying that. I
12 know Fassl the one grabbed me.

13 Q. Okay. All right. And do you recall telling
14 Agent Sieracki that you had basically bruises, visible bruises
15 on your booking photograph?

16 A. Yeah. If you can see my photo, you can see where I was
17 jacked up at. You seen scratches or like confrontational
18 marks.

19 Q. Okay. I'm going to show you what's HT-2, and that was
20 shown to you by Mr. Wise?

21 A. Yeah. That's not a good photo.

22 Q. And where are the injuries?

23 A. I mean, that's not a good photo. You can't even see it.

24 Q. Okay. Can you point out the injuries on that?

25 A. Like around the collar area of the -- up in that area.

~~DATE~~ ~~CROSS~~

1 You actually probably can see one of the dark spots right
2 there.

3 Q. Okay.

4 A. Circle that (indicating).

5 Q. And that's what Hersl gave you; correct? Is that what
6 you're saying now?

7 A. No, I didn't say that.

8 **MR. RAFTER:** Okay. Court's indulgence, Your Honor.

9 **BY MR. RAFTER:**

10 Q. You testified previously that I believe it was -- was it
11 Burns that said, when you asked about your money, "Does it look
12 like we want your money? I make over 100,000 a year"; correct?

13 A. Yes.

14 Q. And Burns said that?

15 A. Yes.

16 Q. Do you remember telling Agent Sieracki that Hersl said
17 that the first time?

18 A. No.

19 Q. Does the report refresh your recollection?

20 A. No, no.

21 Q. It doesn't?

22 A. No.

23 Q. So you don't recall that. All right.

24 A. I recall Burns saying -- making that statement.

25 Q. Now, as far as the money, let's go to the money that you

~~DATE~~ ~~CROSS~~

1 say got stolen from you. How much money did you have?

2 **A.** At that time I had like 530-something dollars and some
3 change.

4 **Q.** \$530; right?

5 **A.** Yes.

6 **Q.** Okay. And do you remember you had told Agent Sieracki
7 that you had two 100s and the rest were twenties and fives;
8 isn't that correct?

9 **A.** Right.

10 **Q.** Okay. So that -- I'm going to show you what's been marked
11 as Hersl 18.

12 **MR. WISE:** Your Honor, this is a document he's never
13 seen before. It's a Baltimore Police Department internal
14 document.

15 **THE COURT:** All right. Do you want to come up to the
16 bench if you have an objection.

17 (Bench conference on the record:

18 **MR. RAFTER:** I can just show him a picture of the
19 money.

20 **MR. WISE:** We'll withdraw the objection. That's fine.

21 **MR. RAFTER:** That's fine.)

22 (Bench conference concluded.)

23 **BY MR. RAFTER:**

24 **Q.** I'm going to show you what is Hersl 18. And that's the
25 money that was turned in by Detective Hersl. Okay. And can

~~DATE~~ ~~CROSS~~

1 you see that?

2 **A.** Vaguely.

3 **Q.** Okay. So you testified you had two 100s and twenties and
4 fives; right?

5 **A.** Right.

6 **Q.** Okay. But here there's \$1 bills and there's \$10 bills;
7 correct?

8 **A.** Correct.

9 **Q.** Okay. Now, that looks like somebody that's trying to make
10 change, correct, lower denominations?

11 **A.** Correct.

12 **Q.** And it's your testimony you didn't have any ones on you?

13 **A.** No, no ones.

14 **Q.** Or tens?

15 **A.** They were tens and fives. Yeah. No -- no ones.

16 **Q.** Now, isn't that indicative of someone who deals drugs?

17 **A.** What's that?

18 **Q.** Small bills.

19 **A.** I'm not sure what you mean by that.

20 **Q.** Ones, fives, tens rather than having large amounts of
21 money?

22 **A.** Anybody can carry money, regardless of if it's ones,
23 fives, tens.

24 **Q.** Sure. But I'm saying isn't that indicative of selling
25 drugs? You've sold drugs before. You've admitted that.

~~TATE~~ ~~CROSS~~

1 **A.** No. I got -- if you want to bring that up, it was a
2 conspiracy -- not a conspiracy, but it was -- I had a
3 co-defendant, and I was a part of a co-defendant. It wasn't me
4 got locked up directly for serving drugs.

5 But to what you just asking me, I don't know if it's
6 indicative to who carry what kinds of money.

7 **Q.** All right. That's fine.

8 **MR. RAFTER:** I have nothing further, Your Honor.

9 **THE COURT:** All right.

10 **MR. NIETO:** Your Honor, I'm sorry. Court's
11 indulgence, if I may.

12 **THE CLERK:** Mr. Nieto, before you start, the
13 microphone, please.

14 **MR. NIETO:** Do you think I need the microphone?

15 **THE COURT:** Everybody needs the microphone.

16 **MR. NIETO:** Everybody needs the microphone? All
17 right.

18 **THE CLERK:** Thank you.

19 CROSS-EXAMINATION

20 **BY MR. NIETO:**

21 **Q.** All right. Mr. Tate, okay, so I'm trying to understand a
22 little bit better about whether you were sitting on the porch
23 of a vacant house on the 2100 or 2200 block of Robb Street when
24 the officers approached you or if you were walking down the
25 street.

~~TATE~~ ~~CROSS~~

1 A. I was walking northbound.

2 Q. You were walking northbound, towards the dead-end?

3 A. Yes.

4 Q. Okay. And this is not a great neighborhood in Baltimore,
5 is it?

6 A. To me it is. I don't have no problems in the
7 neighborhood.

8 Q. You don't have any problems in the neighborhood?

9 A. No.

10 Q. I mean, it's a drug market; right?

11 A. That's what y'all label it as, but I don't see it as a
12 drug market or whatever y'all label it as.

13 Q. Well, do you know if people sell drugs in that area?

14 A. People sell drugs in Baltimore City.

15 Q. Right. Well, this is in Baltimore City; right?

16 A. Right.

17 Q. Right. So if people sell drugs in the area, that's a good
18 indication -- by one -- I'm sorry. I'm sorry. Let me take a
19 step back.

20 When I say "open-air drug market," what I'm suggesting is
21 that's a particular area of the city in which people can come
22 to buy drugs because they know that drugs are sold in a
23 particular block or an area. Have you heard that terminology
24 before?

25 A. Yes.

~~DATE~~ ~~CROSS~~

1 Q. Okay. So in this particular area, right, where you
2 happened to have been when you were arrested, that's considered
3 an open-air drug market; is that your understanding?

4 A. Yes. I don't see drugs being sold when I'm there, so I
5 can't say specifically.

6 Q. You've never seen drugs sold in that neighborhood?

7 A. I mean, not in a while.

8 Q. Not in a while?

9 A. Yeah.

10 Q. When was the last time you saw drugs being sold there?

11 A. Maybe years ago, a few years ago.

12 Q. Three years ago?

13 A. Maybe about three or four years ago.

14 Q. So 2014?

15 A. Yeah, about -- about that.

16 Q. Okay. So you said that the police had provided you a
17 piece of paper, right, like to suggest that they had been in
18 contact with you?

19 A. Right.

20 Q. You got something like that?

21 A. Yes.

22 Q. And that's called like a citizen contact --

23 A. No. It wasn't a citation. It was like a napkin. Like he
24 just wrote it down on a regular white napkin or a piece of
25 paper or something.

1 Q. I'm not suggesting you would have gotten a citation,
2 because you hadn't done anything wrong. Are you saying that
3 the police wrote on a napkin --

4 A. Yeah --

5 Q. -- and gave that to you?

6 A. -- like the back of this piece of paper (indicating) or
7 something like that. It wasn't nothing from -- with
8 Baltimore City name on it.

9 Q. What was the purpose of doing that?

10 A. You might have to ask Officer Hersl that.

11 Q. Well, no. I'm asking you. Did you read the paper?

12 A. Yeah. It just had the date on it.

13 Q. I'm sorry?

14 A. It just had that date on it.

15 Q. He just wrote the date --

16 A. Yes.

17 Q. -- on the back of a piece of paper --

18 A. Yes.

19 Q. -- and gave it to you?

20 A. And said this is my warning. I see you next time, you
21 going to jail -- if I see you again, you going to jail.

22 Q. So there was an expectation that that piece of paper would
23 mean something to either one of you?

24 A. Not to me.

25 Q. Right.

~~DATE~~ ~~CROSS~~

- 1 **A.** Maybe there was an expectation, he expected --
- 2 **Q.** Do you know what was on the other side of the piece of
- 3 paper?
- 4 **A.** It was blank.
- 5 **Q.** So he just had blank, white pieces of paper in his car?
- 6 **A.** I just know what he came out the car and gave me.
- 7 **Q.** All right. So did he have a blank, white piece of paper,
- 8 singular, in his car that he used to give you that warning?
- 9 **A.** He had to if he gave it to me on the white piece of paper.
- 10 **Q.** So he did?
- 11 **A.** Yes.
- 12 **Q.** Okay. Did you see any other white pieces of paper?
- 13 **A.** No, I didn't see inside the car --
- 14 **Q.** Did you see any other scraps of paper lying around?
- 15 **A.** No.
- 16 **Q.** Okay. Now, when he first interacts with you a few days
- 17 before you were arrested, you say you have \$600 on you in cash?
- 18 **A.** Yes.
- 19 **Q.** And a pay stub?
- 20 **A.** Yes.
- 21 **Q.** And then a few days later you're seen again on the same
- 22 block, this time, according to you, with \$523 in cash?
- 23 **A.** 530-something and some change.
- 24 **Q.** 530 and change and a pay stub as well?
- 25 **A.** Yes.

~~DATE~~ ~~CROSS~~

1 Q. All right. Now, Friday was payday for you?

2 A. Right.

3 Q. But the few days before, that was not payday?

4 A. Right.

5 Q. But you had \$600 in cash in this neighborhood on that day?

6 A. Yes.

7 Q. Okay. And no police officer took that money from you on
8 that day, did they?

9 A. No.

10 Q. Right?

11 They didn't say on that day that you had gone to a stash
12 in a wall and sold drugs, did they?

13 A. No.

14 Q. They didn't write up a report saying that they found drugs
15 on your person?

16 A. No.

17 Q. They didn't say that you dropped drugs when they
18 approached you?

19 A. No.

20 Q. And they didn't say that you consented to a search and
21 they found some drugs or money on your person on that day
22 either, did they?

23 A. No.

24 Q. So according to you, you have \$600 in cash and that the
25 police write on a back of a -- the back or the front, just a

1 white piece of paper, a scrap, just the date and say, "Get out
2 of here or we'll arrest you the next time we see you"?

3 **A.** Yes.

4 **Q.** Okay. And so you go back a few days later?

5 **A.** Right.

6 **Q.** Right?

7 Now, you had said that you -- did you used to live in this
8 neighborhood?

9 **A.** Yeah, I used to live there. And I would coach around
10 Cecil Kirk.

11 **Q.** But I'm talking about that block in particular.

12 **A.** I never lived on Robb Street.

13 **Q.** You never lived on Robb Street?

14 **A.** No.

15 **Q.** And it's a dead-end; right? There's not much happening on
16 that street; is that fair to say?

17 **A.** Right.

18 **Q.** So what brought you to that block, not once but twice on
19 the same week?

20 **A.** My friends live in that neighborhood, like --

21 **Q.** Okay.

22 **A.** -- old basketball teammates, things of that nature.

23 **Q.** Who were those friends, sir?

24 **A.** Who are they?

25 **Q.** Yeah; the names.

~~DATE~~ ~~CROSS~~

1 A. Rodney Elliott.

2 Q. I'm sorry, sir?

3 A. Rodney Elliott, Damon Jackson. A few people.

4 Q. And at least those two people live on that -- was it the
5 2100 block or the 2200 block of Robb Street?

6 A. 2000, I believe, 2000 Robb.

7 Q. The 2000 block. All right.

8 So the dead-end, what block is that?

9 A. It's the 2000 block, I believe.

10 Q. You believe?

11 A. Yes.

12 Q. Okay.

13 A. 2000 block.

14 Q. So were you en route to visit with them, or had you
15 already -- had you already conducted your social business
16 there?

17 A. No. I actually had just like came outside. I was just
18 walking around the neighborhood, seeing who was outside and
19 what was going on for that day, for that evening.

20 Q. Well, I mean, it's the end of November. It's cold; right?

21 A. Not really, not that day. That particular day it was nice
22 outside, that Friday.

23 Q. Oh, so that day it was a nice day?

24 A. Yes.

25 Q. But you had a black ski mask on you when you were

1 arrested; right?

2 **A.** A hat? Yeah, a hat. Yeah.

3 **Q.** Oh, it was a hat?

4 **A.** Yes.

5 **Q.** So when it's labeled as a black ski mask, it's just a hat;
6 right?

7 **A.** Yes.

8 **Q.** Okay. On a nice, warm --

9 **A.** No, it wasn't warm in November. The sun was just out.
10 And I had -- I have a bald head, so it get cold sometimes.

11 **Q.** Okay. So even though it was a nice day, it was still hat
12 weather --

13 **A.** Right.

14 **Q.** -- winter hat weather?

15 **A.** Right.

16 **Q.** So you had been socializing and you're walking down the
17 street, but you weren't sitting on the steps of a vacant
18 building, were you?

19 **A.** No.

20 **Q.** 'Cause there are some vacant buildings in that area --

21 **A.** Right.

22 **Q.** -- right?

23 It's not a heavily populated block, is it?

24 **A.** It's a few vacants there, but it's a lot of people in that
25 block, I would say.

1 Q. A lot of people?

2 A. What do you mean? What do you consider "a lot"? I
3 mean --

4 Q. No. I'm asking you, sir. That was the term you used.

5 A. Yeah, it's a lot of people. It's not like a dead -- dead
6 zone. That's not a dead zone.

7 Q. My apologies. If I could just show you what was
8 Government's Exhibit 7. You know, I'm looking at -- this is a
9 picture that the Government had provided and introduced which
10 doesn't seem to be much going on on that block. In fact, I
11 only see one car parked; right?

12 A. Yes.

13 Q. But in all fairness, that's not even a dead-end; right?
14 That's just leading up to the dead-end. So maybe on the next
15 blocks, we'll see there's to be more social activity?

16 MR. NIETO: Court's indulgence.

17 BY MR. NIETO:

18 Q. If I could show you what had been marked as Hersl 17.

19 All right. This is the east side of the block. This is
20 the side of the block where you were walking; right?

21 A. Right.

22 Q. Okay. So just on this block and just in this picture, how
23 many vacants do you count?

24 A. Five.

25 Q. Five?

1 **A.** Five.

2 **Q.** Five; right.

3 There might be some a little bit further on down, but it's
4 a little difficult to see; right? Is that fair to say?

5 **A.** Yes.

6 **Q.** All right. Now, let's take a look at -- marked as 17. I
7 apologize for the glare. Let's see if I can move that a
8 little. There we go.

9 All right. So we see some -- like an abandoned couch in
10 that cut. All right? It's a little difficult to see whether
11 or not this house on the corner, whether that is a vacant or
12 not (indicating). But this is the other side; right?

13 **A.** Correct.

14 **Q.** Okay. All right. So when you came -- before you were
15 arrested, the days that led up to it, you had \$600 in cash. If
16 you don't mind me asking, sir, where was that money coming
17 from?

18 **A.** Work, side jobs, work, stuff like that.

19 **Q.** Well, you were paid biweekly?

20 **A.** Yes.

21 **Q.** Or were you paid --

22 **A.** I do side work for myself.

23 **Q.** Oh, I see.

24 **A.** I'm trying to start my own company, HVAC company.

25 **Q.** So there was a pay stub, but that had nothing to do with

~~DATE~~ ~~CROSS~~

1 the \$600 in cash?

2 **A.** No.

3 **Q.** Okay. So you had done some --

4 **A.** That \$600 came out of the bank, so it could have been part
5 of a direct deposit or cash that I had in the bank.

6 **Q.** All right. And you provided, I'm assuming, the Government
7 the documentation to establish where and how you came into that
8 money; right?

9 **A.** There was no need for me to do that.

10 **Q.** 'Cause they didn't ask to verify any of the information
11 you provided?

12 **A.** For the \$600, no.

13 **Q.** Well, how about the 523, is that coming from the same
14 \$600?

15 **A.** The 530-something dollars --

16 **Q.** My apologies. My apologies, sir. You're right. I'm not
17 trying to put words in your mouth. The 530-something dollars,
18 that is --

19 **A.** That came from that pay stub that I had on me that day.

20 **Q.** That didn't come from the \$600 in cash you had the few
21 days before?

22 **A.** No.

23 **Q.** All right. So that means in the matter of three or four
24 days, you had approximately \$1100 and 30 -- \$1130 in cash on
25 your person?

~~DATE~~ ~~CROSS~~

1 A. Right.

2 Q. And twice in the same week, you are in this block, this
3 drug neighborhood in Baltimore City; right?

4 A. Right.

5 Q. And you don't live there?

6 A. Right.

7 Q. The address -- I think they -- what was the address that
8 they had for you at the time, do you remember?

9 A. At that time I probably gave 'em a fake address because of
10 the way they was talking because I was scared they was probably
11 going to do something.

12 Q. That's a fair point, sir. When --

13 A. Well, Rogate Drive, that's my old --

14 Q. Rogate Drive.

15 A. That's my old address.

16 Q. Right. Because that was the address that you had used in
17 prior court proceedings like in 2004. That wasn't your current
18 address, was it?

19 A. Correct.

20 Q. And there was also other addresses you had provided like
21 Barnsley Place and 5430 Park Heights and 7 Henley Court, if I'm
22 pronouncing that correctly.

23 A. Yes.

24 Q. Do you remember those addresses?

25 A. Yes.

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1 Q. All right. So on the second day in which the police
2 interacted with you, they're alleging that you were selling
3 drugs from a wall.

4 A. The 27th, I believe so.

5 Q. Yes, sir. Well, I mean, you read the paperwork, but
6 that's what the allegations were?

7 A. Right. That's the allegations.

8 Q. But you're saying that's completely false?

9 A. Right.

10 Q. All right. And you, regrettably, had dealt drugs or been
11 involved in the drug game earlier in your life?

12 A. I was not in the game, but just in the experience. But I
13 was with someone and something happened, and I was there at
14 that moment.

15 Q. Because you had mentioned -- I think you maybe -- I don't
16 want to put words in your mouth. I think you had mentioned as
17 a teenager you had gotten into some stuff is that -- am I
18 correct?

19 A. No, I didn't get in no trouble when I was a teenager. I
20 did some things, but --

21 Q. Okay. But in 2004, when you were about 23 --

22 A. Right.

23 Q. -- that's when you were put on probation for distribution
24 of drugs?

25 A. Right.

~~DATE~~ ~~CROSS~~

1 Q. Right. And that -- and that you had given the
2 Rogate Drive as an address in addition to those other three
3 addresses?

4 A. At that time I was living on Rogate Drive,
5 5430 Park Heights.

6 Q. 5430 Park Heights. Okay.

7 But that wasn't your last arrest for drug distribution,
8 was it?

9 A. Yes, I believe so.

10 Q. What about in Baltimore County?

11 A. I never was arrested. That was --

12 **THE COURT:** Approach the bench.

13 **THE WITNESS:** Yeah. That was something -- I had
14 nothing to do with that.

15 **THE COURT:** Wait. Stop. Just a minute. Stop.

16 (Bench conference on the record:

17 **THE COURT:** Did I hear you say "arrest"?

18 **MR. NIETO:** I should have prefaced it a little better,
19 Your Honor. The Government in their direct examination had
20 elicited testimony that the -- this particular case had been
21 dismissed.

22 My concern is that the jury's going to infer that it
23 has something to do with Detective Hersl's or the credibility
24 of the statement of facts. 2014, he had been charged in
25 Baltimore County with possession with intent to distribute,

1 possession of large quantities, and firearm trafficking. Those
2 cases, I believe, were statted.

3 And I wanted to draw a connection between the fact
4 that that stet had nothing to do obviously with the
5 Baltimore City Police Department. But perhaps I was going
6 about it --

7 **MR. WISE:** Your Honor, I would just -- I'm sort of
8 mystified as to why Mr. Nieto is even cross-examining this
9 witness. This is a racketeering act which charges
10 Defendant Hersl alone. It's not within the conspiracy. We've
11 been going now for 20 minutes. And I just -- for the life of
12 me, I can't understand what this is all about.

13 **MR. NIETO:** It is mystifying.

14 **MR. WISE:** Other than to suggest there is a
15 conspiracy.

16 **THE COURT:** I do believe the conspiracy charge is
17 still in this case, and I do believe there are general
18 credibility issues.

19 I have no problem with Mr. Nieto doing a reasonable
20 amount of cross, even though I wasn't necessarily expecting it.
21 But, no. It would be completely unfairly prejudicial to get
22 into some other arrest in Baltimore County that did not result
23 in a conviction and didn't involve -- this officer has nothing
24 to do with it.

25 **MR. NIETO:** Okay. Then I'll move on to the next

~~DATE~~ ~~CROSS~~

1 topic.

2 **THE COURT:** Thank you.

3 **MR. NIETO:** Thank you, Your Honor.)

4 (Bench conference concluded.)

5 **THE COURT:** All right. I think we're going to move
6 on?

7 **MR. NIETO:** Yes, Your Honor. Yes, Your Honor.

8 **BY MR. NIETO:**

9 **Q.** So on the 27th, then, when you are arrested, right, the
10 officers say they see you stashing drugs in that wall, right,
11 at the end of the block?

12 **A.** Correct.

13 **Q.** Okay. Now, you had suggested that you had seen drug
14 dealers in that area maybe a year or so before?

15 **A.** No. That -- yeah, maybe so.

16 **Q.** Right. And so --

17 **A.** 2014.

18 **Q.** Are you -- are you aware of the concept of a stash --

19 **A.** Yes.

20 **Q.** -- in the drug --

21 **A.** Right.

22 **Q.** Right?

23 And so a stash is when someone's selling drugs, they keep
24 the drugs in another hidden location that they can access; but
25 if the police approach them, they would not have any contraband

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1 on them; right?

2 **A.** Right.

3 **Q.** And have you seen -- not you, but have you seen other
4 people utilize a stash location?

5 **A.** No.

6 **Q.** You've never seen anyone use a stash location before?

7 **A.** No.

8 **Q.** So the instances that you've seen people sell drugs,
9 they've actually had it on their person?

10 **A.** Yes.

11 **Q.** All right. So on the 27th, when the officers arrest you,
12 they don't say that the drugs were on your person, do they?

13 **A.** No.

14 **Q.** And they didn't say in their reports that you consented to
15 a search or that you dropped the drugs; right? Nothing like
16 that?

17 **A.** Right.

18 **Q.** In fact, they do -- they explained that they see you going
19 back and forth to this wall or stashing this bag in the wall
20 and then recovering those drugs. That's what they say?

21 **A.** Yeah, that's what they said.

22 **Q.** And so it's your contention that they completely made up
23 that whole process?

24 **A.** Yes.

25 **Q.** And that they just rolled up on you for seemingly no good

1 reason whatsoever?

2 **A.** Yes.

3 **Q.** Okay. And that although days before, when you had \$600 on
4 your person, they never touched that money; they didn't take
5 that from you; correct?

6 **A.** Correct.

7 **Q.** But afterwards, a few days later, they take some of it but
8 submit the rest?

9 **A.** They -- whatever -- I didn't have \$530 in my property
10 papers. I had 91-cent. So from the time they had my money
11 till the 91 cent, I don't know where it went.

12 **Q.** So -- and if I may briefly, sir, the money that's
13 submitted to evidence control is less than what you say you had
14 on you?

15 **A.** Yes, and I didn't have no dollar bills in my pocket.

16 **Q.** You didn't have any dollar bills?

17 **A.** No.

18 **Q.** No, because dollar bills would suggest drug distribution;
19 right? And that's not what you were doing?

20 **A.** I wouldn't say that. Everybody carry dollar bills. I
21 just -- at that time I didn't have none.

22 **Q.** But you didn't carry dollar bills; right?

23 **A.** No, at that time I didn't have none.

24 **Q.** Right. Okay. But in your experiences, as limited as they
25 may be, you've never seen someone go to purchase drugs with

~~DATE~~ ~~CROSS~~

1 hundred-dollar bills; right?

2 **A.** I don't understand what you getting at.

3 **Q.** So what brought you back to this block three days after
4 this incredibly unpleasant experience with
5 Baltimore City Police?

6 **A.** 'Cause that's like a neighborhood I grew up in. That's my
7 family there. Like, I didn't do nothin' wrong. Why wouldn't I
8 go back.

9 **Q.** I'm sorry. Who is your family that lives in that block?

10 **A.** My teammates, my ex-teammates I consider family.

11 **Q.** Okay. Did you talk to them about your experiences?

12 **A.** Some of them were out there and saw that -- saw what
13 happened.

14 **Q.** Oh, so there were witnesses to this?

15 **A.** Right.

16 **Q.** Oh, and you provided their information, then, to the
17 federal government to corroborate your story; right?

18 **A.** No.

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

20 **THE WITNESS:** There was no need for me to do that.

21 **BY MR. NIETO:**

22 **Q.** There's no need for you to do that?

23 **THE COURT:** Sustained.

24 **THE WITNESS:** Right.

25 **THE COURT:** Sustained.

~~DATE~~ ~~CROSS~~

1 **MR. WISE:** Objection, Your Honor.

2 **BY MR. NIETO:**

3 **Q.** You had told the federal agents that it had been raining
4 on that day you were arrested?

5 **A.** It had just started raining. It was just starting to
6 rain.

7 **Q.** Just started raining; right? And that you had been
8 speaking with an older male from the neighborhood?

9 **A.** Right.

10 **Q.** That's true?

11 **A.** That's who I was, well, walking up the street with when
12 that happened.

13 **Q.** Oh, so you were walking up the street with somebody?

14 **A.** Right. But he was --

15 **Q.** So you weren't alone?

16 **A.** I was walking into his direction, and he was there like on
17 his stoop.

18 **Q.** And my apologies, I'm trying to figure out if you were
19 speaking with him or if you were going to speak with him.

20 **A.** No. I was speaking as I was going along. Like, I didn't
21 stop and hold a conversation with him.

22 **Q.** Okay. But you mentioned -- but you told the
23 federal government that you were speaking with an older male in
24 the neighborhood?

25 **A.** Right.

~~DATE REDIRECT~~

1 Q. Okay. And you were holding an alcoholic drink?

2 A. Right.

3 Q. And you were walking down the street?

4 A. Walking up the street.

5 Q. Walking towards the dead-end?

6 A. Yes.

7 Q. All right. Okay. So after your case was dismissed, did
8 you ask that the police department return the money that was in
9 evidence against you?

10 A. No, I ain't asking for nothing. I just got out of
11 Baltimore City. I just left the city after that.

12 Q. Okay. And the gentleman sitting to the -- on the end
13 right there (indicating), he wasn't part or parcel of this
14 interaction with the city police, was he?

15 A. No.

16 MR. NIETO: Okay. Nothing further, Your Honor.

17 THE COURT: All right. Thank you.

18 Any redirect?

19 MR. WISE: Just briefly, Your Honor.

20 THE CLERK: Mr. Nieto.

21 THE COURT: We have to retrieve the microphone.

22 REDIRECT EXAMINATION

23 BY MR. WISE:

24 Q. You were asked questions about money you had a few days
25 earlier, about \$600, and you -- Mr. Nieto on a couple of

~~DATE REDIRECT~~

1 occasions referred to the amount of money you actually had on
2 the 27th as \$520, but that wasn't what you said; right?

3 **A.** Right.

4 **Q.** So just to be clear, I'm going to put up HT-9.

5 On the 27th, you had \$530 on you; right?

6 **A.** Right.

7 **Q.** And that was in your pockets, right, or pocket?

8 **A.** Yes.

9 **Q.** And the source of it was your job as an HVAC technician;
10 right?

11 **A.** Right.

12 **Q.** And then ultimately you saw that the charging papers
13 showed that only \$216 had been turned in; right?

14 **A.** Right.

15 **Q.** So that means \$314 had been taken from you on the 27th and
16 not turned in; right?

17 **A.** Yes.

18 **Q.** And you testified that Defendant Hersl told Fassl to
19 search you. Fassl took the money. And then Fassl asked Hersl
20 what to do with it.

21 And Fassl said, "Should I give it back to him?"

22 And Hersl said, "No. Keep it"?

23 **MR. PURPURA:** Objection.

24 **THE WITNESS:** Correct.

25 **THE COURT:** Sustained.

~~DATE REDIRECT~~

1 **MR. PURPURA:** Thank you.

2 **BY MR. WISE:**

3 **Q.** What did Hersl tell Fassl to do?

4 **A.** Keep the money.

5 **Q.** And you were asked by Mr. Nieto if you made a complaint or
6 asked for the money back, I guess, after your arrest.

7 Do you remember being asked that?

8 **A.** Yes.

9 **Q.** And you testified "no"; you left the city. Right?

10 **A.** Right.

11 **Q.** You live in Anne Arundel County now; right?

12 **A.** Yes.

13 **Q.** How long were you in jail when you were arrested?

14 **A.** Four days, I believe.

15 **Q.** And what happened while you were in jail?

16 **A.** What do you mean?

17 **Q.** What happened to your job?

18 **A.** Oh, I lost my job. Lost my job.

19 **Q.** And why did you lose your job?

20 **A.** 'Cause I didn't show up for work.

21 **Q.** And why didn't you show up for work?

22 **A.** I was in jail.

23 **Q.** And what happened when you lost your job?

24 **A.** I lost my job, lost my car; had to move; owed people money
25 for helping me get bailed out, which I'm still paying people

1 back; and couldn't get a job for a while because of this and --
2 yeah, I just basically started maybe a year ago starting
3 getting back afloat.

4 Q. So from November of 2015, you were out of work, then, for
5 about how long because of this?

6 A. Up until, like, I want to say April or February of '16 --

7 Q. Okay.

8 A. -- I got a job.

9 Q. And that's around the time the state case was dismissed;
10 right?

11 A. Right. It was dismissed in March --

12 Q. Okay.

13 A. -- I believe. And I got a job in April, yeah. I got a
14 job after it was dismissed.

15 Q. All right.

16 A. 'Cause I couldn't get a job because -- until -- because
17 that case was pending because nobody would hire me. So once
18 that was over with, that's when I had got another job.

19 Q. And that's a job you've had since then?

20 A. Yes.

21 Q. You testified that when the officers pulled up on you, you
22 knew they were police 'cause they had vests on; is that right?

23 A. Right. And the voices.

24 Q. And the voice -- you said you recognized their voices --

25 A. Right.

1 Q. -- is that right?

2 A. Yes.

3 Q. Were they armed? Did you see if they were armed?

4 A. Yes.

5 Q. All three of them?

6 A. Yes.

7 MR. WISE: Nothing further, Your Honor.

8 THE COURT: All right. Thank you. Anything else?

9 MR. RAFTER: No, Your Honor.

10 MR. NIETO: No, Your Honor.

11 THE COURT: All right. Thank you, sir. You are
12 excused. You may step down.

13 (Witness excused.)

14 (End of excerpt.)

15 (4:34 p.m.)

16 INDEX

17 GOVERNMENT'S EVIDENCE

18 <u>WITNESS</u>	<u>DR</u>	<u>CR</u>	<u>RDR</u>	<u>RCR</u>
19 HERBERT TATE	3	27, 47	68	--

20 I, Douglas J. Zweizig, RDR, CRR, do hereby certify that
21 the foregoing is a correct transcript from the stenographic
record of proceedings in the above-entitled matter.

22 _____ /s/

23 Douglas J. Zweizig, RDR, CRR
24 Registered Diplomate Reporter
25 Certified Realtime Reporter
Federal Official Court Reporter
DATE: February 18, 2018

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<p>'</p> <p>'16 [3] 6/24 6/24 71/6</p> <p>'Cause [9] 22/16 24/18 33/20 55/20 58/10 66/6 70/20 71/16 71/22</p> <p>'em [3] 22/6 28/7 59/9</p>	<p>68 [1] 72/19</p> <p>7</p> <p>7 Henley Court [1] 59/21</p> <p>9</p>	<p>allegations [2] 60/6 60/7</p> <p>alleging [1] 60/2</p> <p>alley [6] 19/18 19/19 19/24 20/5 20/20 23/15</p> <p>alone [2] 62/10 67/15</p> <p>along [1] 67/20</p> <p>already [4] 14/19 27/12 54/15 54/15</p> <p>also [3] 2/7 37/24 59/20</p> <p>although [1] 65/3</p> <p>am [2] 23/24 60/17</p> <p>AMERICA [1] 1/3</p> <p>amount [2] 62/20 69/1</p> <p>amounts [1] 46/20</p> <p>Anne [3] 3/24 4/2 70/11</p> <p>Anne Arundel County [3] 3/24 4/2 70/11</p> <p>another [5] 15/21 26/12 30/10 63/24 71/18</p> <p>answer [1] 43/4</p> <p>answered [2] 26/15 37/16</p> <p>any [14] 6/8 6/13 12/21 12/24 22/14 24/23 46/12 48/8 51/12 51/14 58/10 63/25 65/16 68/18</p> <p>Anybody [1] 46/22</p> <p>anymore [1] 19/22</p> <p>anyone [2] 20/10 64/6</p> <p>anything [12] 12/8 13/24 14/1 14/20 19/11 20/4 21/18 24/7 34/5 34/24 50/2 72/8</p> <p>apart [1] 19/7</p> <p>apologies [4] 56/7 58/16 58/16 67/18</p> <p>apologize [1] 57/7</p> <p>approach [3] 28/1 61/12 63/25</p> <p>approached [2] 47/24 52/18</p> <p>approximately [2] 34/14 58/24</p> <p>April [2] 71/6 71/13</p> <p>are [21] 4/4 6/13 7/24 18/2 18/4 21/3 21/11 24/19 34/16 41/12 43/22 48/22 50/2 53/24 55/20 59/2 62/17 63/9 63/18 63/18 72/11</p> <p>area [14] 4/19 27/14 27/24 29/8 30/16 43/25 43/25 48/13 48/17 48/21 48/23 49/1 55/20 63/14</p> <p>armed [3] 26/13 72/3 72/3</p> <p>around [11] 9/21 9/21 10/24 14/13 14/13 27/7 43/25 51/14</p>
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<p>1</p> <p>100,000 [1] 44/12</p> <p>100s [2] 45/7 46/3</p> <p>101 [1] 1/24</p> <p>106 [1] 1/4</p> <p>14 [3] 28/4 28/15 28/20</p> <p>15 [2] 28/5 29/10</p> <p>16 [2] 28/5 29/25</p> <p>17 [3] 35/8 56/18 57/6</p> <p>18 [3] 45/11 45/24 72/25</p> <p>19th [1] 31/22</p> <p>1A [1] 1/9</p>	<p>A</p> <p>abandoned [1] 57/9</p> <p>able [1] 4/9</p> <p>about [48] 5/8 5/12 7/22 7/24 8/17 8/17 9/19 10/1 10/12 14/2 14/14 14/24 16/5 16/24 17/7 19/25 23/12 23/16 24/7 25/13 27/17 28/7 28/25 31/7 32/8 36/15 37/14 38/11 40/19 41/4 41/19 42/15 42/25 44/11 47/22 49/13 49/15 49/15 53/11 58/13 60/21 61/10 62/6 62/12 66/11 68/24 68/25 71/5</p> <p>above [1] 72/21</p> <p>above-entitled [1] 72/21</p> <p>access [1] 63/24</p> <p>according [2] 51/22 52/24</p> <p>act [1] 62/9</p> <p>activity [1] 56/15</p> <p>actual [1] 3/22</p> <p>actually [5] 8/13 44/1 54/17 64/9 69/1</p> <p>addition [1] 61/2</p> <p>address [8] 3/23 59/7 59/7 59/9 59/15 59/16 59/18 61/2</p> <p>addresses [3] 59/20 59/24 61/3</p> <p>admitted [1] 46/25</p> <p>afloat [1] 71/3</p> <p>after [10] 14/12 14/20 15/16 17/6 40/4 66/3 68/7 68/11 70/6 71/14</p> <p>afternoon [5] 3/20 3/21 26/6 27/3 27/4</p> <p>afterwards [1] 65/7</p> <p>again [7] 11/21 15/12 32/21 34/6 37/18 50/21 51/21</p> <p>against [2] 6/11 68/9</p> <p>agent [29] 2/8 32/3 32/5 33/4 34/10 35/4 37/2 37/20 38/18 39/2 39/4 39/9 39/19 40/1 40/9 40/11 40/18 40/20 41/2 41/8 41/22 41/25 42/8 42/11 42/15 43/9 43/14 44/16 45/6</p>	<p>allegations [2] 60/6 60/7</p> <p>alleging [1] 60/2</p> <p>alley [6] 19/18 19/19 19/24 20/5 20/20 23/15</p> <p>alone [2] 62/10 67/15</p> <p>along [1] 67/20</p> <p>already [4] 14/19 27/12 54/15 54/15</p> <p>also [3] 2/7 37/24 59/20</p> <p>although [1] 65/3</p> <p>am [2] 23/24 60/17</p> <p>AMERICA [1] 1/3</p> <p>amount [2] 62/20 69/1</p> <p>amounts [1] 46/20</p> <p>Anne [3] 3/24 4/2 70/11</p> <p>Anne Arundel County [3] 3/24 4/2 70/11</p> <p>another [5] 15/21 26/12 30/10 63/24 71/18</p> <p>answer [1] 43/4</p> <p>answered [2] 26/15 37/16</p> <p>any [14] 6/8 6/13 12/21 12/24 22/14 24/23 46/12 48/8 51/12 51/14 58/10 63/25 65/16 68/18</p> <p>Anybody [1] 46/22</p> <p>anymore [1] 19/22</p> <p>anyone [2] 20/10 64/6</p> <p>anything [12] 12/8 13/24 14/1 14/20 19/11 20/4 21/18 24/7 34/5 34/24 50/2 72/8</p> <p>apart [1] 19/7</p> <p>apologies [4] 56/7 58/16 58/16 67/18</p> <p>apologize [1] 57/7</p> <p>approach [3] 28/1 61/12 63/25</p> <p>approached [2] 47/24 52/18</p> <p>approximately [2] 34/14 58/24</p> <p>April [2] 71/6 71/13</p> <p>are [21] 4/4 6/13 7/24 18/2 18/4 21/3 21/11 24/19 34/16 41/12 43/22 48/22 50/2 53/24 55/20 59/2 62/17 63/9 63/18 63/18 72/11</p> <p>area [14] 4/19 27/14 27/24 29/8 30/16 43/25 43/25 48/13 48/17 48/21 48/23 49/1 55/20 63/14</p> <p>armed [3] 26/13 72/3 72/3</p> <p>around [11] 9/21 9/21 10/24 14/13 14/13 27/7 43/25 51/14</p>
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<p>3</p> <p>3 o'clock [2] 10/1 10/12</p> <p>30 [2] 1/9 58/24</p> <p>302 [2] 36/4 36/16</p> <p>36 [1] 4/5</p> <p>37 [1] 25/6</p> <p>3:03 p.m [1] 3/2</p>	<p>A</p> <p>abandoned [1] 57/9</p> <p>able [1] 4/9</p> <p>about [48] 5/8 5/12 7/22 7/24 8/17 8/17 9/19 10/1 10/12 14/2 14/14 14/24 16/5 16/24 17/7 19/25 23/12 23/16 24/7 25/13 27/17 28/7 28/25 31/7 32/8 36/15 37/14 38/11 40/19 41/4 41/19 42/15 42/25 44/11 47/22 49/13 49/15 49/15 53/11 58/13 60/21 61/10 62/6 62/12 66/11 68/24 68/25 71/5</p> <p>above [1] 72/21</p> <p>above-entitled [1] 72/21</p> <p>access [1] 63/24</p> <p>according [2] 51/22 52/24</p> <p>act [1] 62/9</p> <p>activity [1] 56/15</p> <p>actual [1] 3/22</p> <p>actually [5] 8/13 44/1 54/17 64/9 69/1</p> <p>addition [1] 61/2</p> <p>address [8] 3/23 59/7 59/7 59/9 59/15 59/16 59/18 61/2</p> <p>addresses [3] 59/20 59/24 61/3</p> <p>admitted [1] 46/25</p> <p>afloat [1] 71/3</p> <p>after [10] 14/12 14/20 15/16 17/6 40/4 66/3 68/7 68/11 70/6 71/14</p> <p>afternoon [5] 3/20 3/21 26/6 27/3 27/4</p> <p>afterwards [1] 65/7</p> <p>again [7] 11/21 15/12 32/21 34/6 37/18 50/21 51/21</p> <p>against [2] 6/11 68/9</p> <p>agent [29] 2/8 32/3 32/5 33/4 34/10 35/4 37/2 37/20 38/18 39/2 39/4 39/9 39/19 40/1 40/9 40/11 40/18 40/20 41/2 41/8 41/22 41/25 42/8 42/11 42/15 43/9 43/14 44/16 45/6</p>	<p>allegations [2] 60/6 60/7</p> <p>alleging [1] 60/2</p> <p>alley [6] 19/18 19/19 19/24 20/5 20/20 23/15</p> <p>alone [2] 62/10 67/15</p> <p>along [1] 67/20</p>

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