

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) CRIMINAL CASE NO. CCB-17-106  
DANIEL THOMAS HERSL, )  
Defendant. )  
\_\_\_\_\_)

Friday, June 22, 2018  
Courtroom 1A  
Baltimore, Maryland

BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE

MOTION FOR NEW TRIAL - SENTENCING

For the Plaintiff:

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

For the Defendant:

William Purpura, Jr., Esquire

Also Present:

Gina Swillo, U.S. Probation Officer  
Special Agent Kevin Bodmer, FBI

Reported by:

Douglas J. Zweizig, RDR, CRR  
Federal Official Court Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, Maryland 21201

P R O C E E D I N G S

(10:13 a.m.)

**THE COURT:** Good morning, everyone. You can be seated, please.

Call the case, Mr. Wise.

**MR. WISE:** Thank you, Your Honor.

The case is United States of America versus Daniel Thomas Hersl, Criminal No. CCB-17-106.

Leo Wise and Derek Hines for the United States. And with us at counsel table is Special Agent Kevin Bodmer of the FBI.

**THE COURT:** All right. Good morning.

**MR. PURPURA:** Judge Blake, good morning.

**THE COURT:** Good morning.

**MR. PURPURA:** William Purpura on behalf of Daniel Thomas Hersl, who is present as well, Your Honor.

**THE COURT:** All right. Thank you. You can be seated.

All right. We have, to begin with, a motion for new trial that has been filed on behalf of Mr. Hersl and recently supplemented with some exhibits. We need to address that first, of course.

And it's your motion, Mr. Purpura. If you'd like to go ahead.

**MR. PURPURA:** Your Honor, thank you. Could I just address you from the podium?

1           **THE COURT:** Of course.

2           **MR. PURPURA:** Your Honor, if need be, I will also just  
3 adopt the Taylor filing, which is docketed 396. That's  
4 Ms. Wicks' document which sets out some of the transcript, as  
5 well as part of the motion.

6           **THE COURT:** All right.

7           **MR. PURPURA:** Your Honor, if I may, on November 27th,  
8 2015, in the 2000 block of Robb Street -- this is the  
9 Herbert Tate incident. The Santiful incident is the very next  
10 day, which is November 28th, 2015.

11           As the Court will recall that -- we highly contested  
12 that Mr. Tate, number one, was improperly stopped. Robb Street  
13 was and is a high open-air drug area. We showed exhibits  
14 indicating the T in the dead-end alley, which gives a drug  
15 trafficker access to go either to his left, which would be  
16 east, and/or west to escape police apprehension.

17           Mr. Tate testified that two days before the 27th, he  
18 was stopped by at that time Detective Hersl and Sergeant Burns,  
19 again, for a possible drug violation and forewarned to stay out  
20 of the area.

21           And then on the 27th, he was arrested by  
22 Sergeant Burns, Detective Fassl, and Detective Hersl for drug  
23 distribution, and recovered was 15 blue-and-white gelcaps and  
24 an additional 50 blue-and-white gelcaps.

25           And Mr. Herbert Tate contested that, in fact, they

1 were not his, leaving the impression with the jury, regardless  
2 of cross-examination, that it was Detective Hersl who took his  
3 money, who apparently either planted those drugs on him or said  
4 "they're yours," regardless if they were his and/or not.

5 And why that's important, because the very next day is  
6 the corroborating testimony, in essence, of Antonio Santiful.

7 These are the two civilian, in quotes, witnesses the Government  
8 called indicating that Mr. Hersl was targeting civilians.

9 Herbert Tate was the first supposed civilian and

10 Antonio Santiful is the second.

11 Herbert Tate said he doesn't live in that area. He  
12 was only visiting that area on these two separate days to visit  
13 old friends.

14 Mr. Santiful said on November 28th, when he testified  
15 at approximately 2:15 in the afternoon or 2:30 in the afternoon  
16 on February 1st of 2018, that when he was in the 2100 block of  
17 Aikens on November 28th, 2015, he was there just to play  
18 video games -- despite the fact he doesn't live there --  
19 video games with friends; in essence, very lawful activity.

20 Detective -- or the evidence from the arrest on  
21 November 28th, 2015, was that Detective Hersl, along with other  
22 detectives, apprehended Deontray Brown and Antonio Santiful.

23 And in Mr. Santiful's sister's vehicle there was drugs  
24 as well as a handgun.

25 And from Deontray Brown, that he spit out, were also

1 drugs which were consistent in size and shape and packaging to  
2 the drugs found in the vehicle, indicative of distribution, in  
3 the 2100 block of Aiken Street.

4 And even Antonio Santiful indicated it was an open-air  
5 market back in 2015, as it obviously still is in 2018.

6 In essence, he denied -- not in essence. He did deny  
7 that he possessed the gun and he denied that he had anything to  
8 do with the drugs, again, leaving the impression that  
9 Detective Hersl, just like he did to Mr. Tate on Robb Street,  
10 planted a gun and drugs on the defendant.

11 And he was improperly arrested. And after he's  
12 improperly arrested, his money's taken. So the whole purpose  
13 of planting a gun and drugs is to steal money from an innocent  
14 civilian, and that was his testimony as what occurred on  
15 November 28th, 2015.

16 When I cross-examined him -- I think really which  
17 makes matters worse -- when I cross-examined him as to his  
18 prior, I think, two or three gun-possession convictions, the  
19 Government --

20 **THE COURT:** Two, I think.

21 **MR. PURPURA:** Two.

22 -- the Government on redirect highlighted the fact  
23 that in his 2006 -- August 23rd, 2006, one of the detectives  
24 that was involved in that arrest was Detective Jenkins.

25 Mr. Santiful seized upon that and said that, of

1 course, he did not have the gun on that particular day, he only  
2 pled because he wanted to get out of jail.

3 Again, an indication that Jenkins was involved, and he  
4 has been involved with Mr. Hersl planting guns on various  
5 defendants, and in particular Mr. Santiful on his prior  
6 incident, as well as this incident.

7 So Santiful comes to this court, in Federal Court, and  
8 tells the jury, in essence, that in 2006, as well as in 2015,  
9 these officers -- Hersl one, Jenkins the other -- planted guns  
10 on him.

11 I have the -- and what I think -- and the Government  
12 can respond to this when they get up here -- I'm sure the  
13 Government didn't look at the statement of probable cause on  
14 the 2006 incident or I know that Mr. Hines would not have asked  
15 that question, because the statement of probable cause in the  
16 2006 incident -- which I'm moving in now as  
17 Defense Exhibit No. 2 for the purpose of this motion --  
18 indicates that it was --

19 **THE COURT:** Excuse me, let me be sure that I --  
20 Exhibit 2 --

21 **MR. PURPURA:** 2.

22 **THE COURT:** -- I have relates to Mr. Santiful, the  
23 2006 --

24 **MR. PURPURA:** Correct.

25 **THE COURT:** Okay.

1           **MR. PURPURA:** And that was the point of the redirect,  
2 I guess, because Jenkins is noted as one of the three officers  
3 that were involved in the arrest of Mr. Santiful.

4           But from the statement of probable cause, the only  
5 participation, or the limited participation of Jenkins in that  
6 arrest, was to turn the gun in.

7           It was Detective or -- Detective Tolliver Brown, along  
8 with Jenkins, who stopped the vehicle. It was  
9 Detective Tolliver who chased after Mr. Santiful and saw  
10 Mr. Santiful -- this is Detective Tolliver -- go into his groin  
11 area, also known as his dip area, while he's running through  
12 the alley, pull out a handgun, and throw the handgun while he's  
13 being chased.

14           He then takes off his shirt to disguise himself, where  
15 he's arrested outside the alley by Detective Brown at that  
16 point. No mention of Detective Jenkins.

17           So the point of that, the point of the exhibit, is to  
18 show that Detective Jenkins, in a 2006 incident, had very  
19 limited, limited, if at all, responsibility for the arrest  
20 and/or for the sightings.

21           And what was seen was by Detective Tolliver and  
22 Detective Brown, and they very clearly indicate they saw  
23 Mr. Santiful with a gun at that time.

24           Your Honor, I didn't move in, but I would move in now,  
25 Exhibit Number 1 which is, again, just the basic statement of

1 probable cause for the October 27th, 2015, Herbert Tate arrest,  
2 which I already alluded to, and I believe that's already part  
3 of the documents the Government introduced during the trial;  
4 but just in case, for the purpose of the motion, I'd move that  
5 in now at this point.

6 **THE COURT:** All right.

7 **MR. PURPURA:** So I guess the point being that the  
8 Government goes on at that point -- and I know they talked to  
9 their witnesses, and they should talk to their witnesses. And  
10 I know -- and believe me, I know this for a fact, that if  
11 Mr. Hines or Mr. Wise ever received information at that point  
12 that Mr. Santiful was still selling drugs, they would have told  
13 counsel. There's no question in my mind about that.

14 And I know that they spoke, which they should have,  
15 talked to their witness before he took the witness stand just  
16 to make sure, with a record like you have, with multiple gun  
17 prior violations that you're still not out there selling drugs,  
18 are you?

19 And I'm sure that Mr. Santiful, when they asked him  
20 that -- 'cause they don't want to misrepresent something to the  
21 jury, told them, I'm working two jobs, and that's what he  
22 represented to the jury, that he's working one job under the  
23 table in 2018 and another job that apparently he's getting paid  
24 by a check.

25 So then Mr. Santiful comes to court on February 1st at



1 2 o'clock or 2:15 in the afternoon -- and I would move in at  
2 this point Defense Exhibit Number 4, which is the -- if I can  
3 get this up here.

4 **THE COURT:** I have it.

5 **MR. PURPURA:** You do? I just want to just put it on  
6 the screen as well, if I may.

7 **THE COURT:** Sure.

8 **MR. PURPURA:** If I get -- I'm not -- give it a second,  
9 I hope.

10 **THE COURT:** If you can keep on backing up, right.

11 **MR. PURPURA:** So Mr. Santiful came in in the afternoon  
12 with a black hat, black hoodie, and this work vest, indicating  
13 that he either just got off from work or was just going to work  
14 at that point. I think he said he just got off from work and  
15 he was hurrying back to work at that point on February 1st,  
16 2015.

17 And, again, highlighting to the jury that he is a  
18 working man and corroborating everything that the Government  
19 represented to the jury that he still was, and that's what he  
20 represented to the jury, that he did not deal drugs in 2015, he  
21 did not possess drugs in 2015, he did not have a handgun in  
22 2015, he did not have a handgun in 2016. It was dirty cops  
23 that did all this to him.

24 Well, we know the very, very day that he lied to  
25 Your Honor, that he lied to the jury, that he lied to

1 Government counsel -- I'm sure asked him if he's still dealing  
2 drugs. He was dealing drugs.

3 We know now -- Defense Exhibit Number 3, which is the  
4 Santiful indictment -- we know now that at least from  
5 November 2017 and continuing through the indictment, which is  
6 sometime in May of 2018, that Mr. Santiful, at that very same  
7 spot, 2100 block of Aiken Street, was involved with a  
8 drug-trafficking crew by the name of Str8 Kash -- K-A-S-H --  
9 Cartel, SKC.

10 That indictment charges that Mr. Santiful, plus other  
11 members of that Str8 Kash Cartel, distributed more than  
12 28 grams of cocaine base, which has a mandatory minimum of five  
13 years, and a detectable amount of heroin.

14 We know that on -- now we know that on November 1st --  
15 excuse me, February 1st, 2018 --

16 **THE COURT:** Before you move on to February 1st, I just  
17 want to be clear. I have Exhibit 3. We're looking at the  
18 indictment. I agree with you that it says there was a  
19 conspiracy that began in November 2017. The only substantive  
20 counts -- and I may have missed something -- that I've observed  
21 as to Mr. Santiful are from March of 2018.

22 **MR. PURPURA:** That's correct, Your Honor.

23 **THE COURT:** Okay.

24 **MR. PURPURA:** You're correctly pointing that out.

25 Mr. Wise correctly pointed that out in his response motion.

1 That is correct. There was -- apparently on those particular  
2 dates in March of 2018, Mr. Santiful was approached by an  
3 undercover, which was videoed, and at that point he did a  
4 hand-to-hand distribution.

5 But unbeknownst to Mr. Santiful, that on February 1st,  
6 the very morning that he testified and perjured himself in this  
7 particular courtroom, he was on film -- and I would move in --  
8 I'm not going to show it -- but I would move in now as  
9 Defense Exhibit Number 7, which is the pole camera on 2100  
10 block, Aiken Street. And I can tell the Court, if the Court  
11 wants to view this, at the -- there's multiple events. This  
12 would be the second event on the video right at 9:47 a.m. is  
13 when Mr. Santiful exits a vehicle which has been parked in the  
14 2100 block, Aiken Street. There's a black man with a black  
15 hoodie who's been in the area for about at least 10 to 15  
16 minutes pacing back and forth, communicates with Mr. Santiful,  
17 apparently in the backseat.

18 When Mr. Santiful exits that vehicle at 9:47, he  
19 clearly pulls a handgun out or has a handgun in his hand and  
20 passes it to the unknown black male with the black hoodie and  
21 then he points (indicating), he directs that man where to take  
22 the gun, and that gentleman with the black hoodie then takes  
23 that gun to the alley.

24 And I know the Government would agree that's  
25 indicative of putting a gun in the stash area to protect the

1 stash. And someone of influence, higher up in the conspiracy,  
2 is the person who brings that gun there and then directs  
3 someone else as to where to keep the gun. And the purpose of  
4 keeping that gun is to obviously protect the stash and to shoot  
5 anyone who would interfere with that stash itself.

6 So I would move in Defense Exhibit Number 7 at this  
7 time, Your Honor, as well.

8 May I just pass this to the clerk?

9 **THE COURT:** Sure. That's fine.

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

11 **THE COURT:** And, Mr. Purpura, because I forgot to say  
12 this at the very beginning and I just want to alert everybody,  
13 we'll take as much time as we need for these proceedings today.  
14 I have had somewhat of an emergency matter come up that will  
15 require me to temporarily basically take an early lunch. At  
16 quarter of 12:00, I will need to adjourn the proceedings. I  
17 will come back. I will give it the full attention required,  
18 but I will need to stop at quarter of 12:00 for about an hour  
19 or so.

20 **MR. PURPURA:** Thank you.

21 Then after the handgun was -- as the video will  
22 show -- and I now am moving in Defense Exhibit Number 5, which  
23 is the ATF report of the incident itself. And I will indicate  
24 that the report is apparently written or signed off on on  
25 February 8th, 2018. It is not on February 1st, 2018.

1 But what the report does go on to indicate is that on  
2 February 1st, 2018 -- and I believe the Government will  
3 stipulate to this -- based on use of MVA photographs, this  
4 gentleman on the screen, Antonio Santiful, is identified on  
5 that date, which is February 1st, 2018, by the ATF in a  
6 investigation from this district headed up by an Assistant  
7 United States Attorney Patricia McLane.

8 And Santiful at that point is known to the ATF.  
9 Equally so, I will indicate that this particular Hersl case was  
10 not investigated by the ATF. It was investigated by  
11 Baltimore City Police in conjunction with the FBI.

12 The ATF investigation was headed up by the ATF in  
13 conjunction with Baltimore City Police.

14 So we know that on the very day that he did testify,  
15 that's the day that he's identified as the man who's passing,  
16 again, a gun on, again, the 2100 block of Aiken Street.

17 The -- approximately the close in this case -- and I'm  
18 not sure, I couldn't tell from the docket entry or my notes --  
19 I believe Government close -- opening close was either -- and  
20 they can correct me -- February 7th or 8th. It was somewhat  
21 about a week after Santiful testified, give or take a day or  
22 two. The record itself will show.

23 But at that time, again, Mr. Santiful's photograph is  
24 shown and the suggestion being that Mr. Santiful, like  
25 Mr. Tate, were civilians doing nothing wrong, being shook down

1 for the sole purpose of enriching Detective Hersl. Again,  
2 discounting that these were not legitimate arrests, that they  
3 were not conducting criminal acts, that these were just poor  
4 gentlemen in Baltimore City who were being targeted by the  
5 police for their own personal enrichment.

6 The United States Attorney's Office, in general, in  
7 this district knew of this ongoing investigation involving  
8 Aiken Street. Aiken Street was a substantial portion --  
9 one-fifth, basically, of the charges against Mr. Hersl at that  
10 time.

11 The investigation of Hersl had been going on for at  
12 least a year up till then. I'm sure that it's somewhat public  
13 within the U.S. Attorney's Office what's going on, or it should  
14 be. Perhaps not.

15 That there apparently -- and I would also add that  
16 obviously this case, the Hersl and Taylor case, was a very  
17 public case. There were -- media was paying a great deal of  
18 attention to this particular case. The facts of this case were  
19 reported in the newspaper almost on a daily basis.

20 The -- and the Court can correct me if I'm wrong, but  
21 I've noted that supervisors from the U.S. Attorney's Office  
22 were present from time to time during the trial.

23 I noted that the then-sitting U.S. Attorney was  
24 present for a period of the trial itself. So this was a very  
25 public trial itself involving all the matters which were

1 disclosed.

2 It would seem that there should be some sort of  
3 protection against problems such as this. Mr. Santiful is not  
4 a average citizen who the Government presents as a witness.  
5 Mr. Santiful is a man who the Government knows has a very  
6 checkered, colorful past of prior criminal violations.

7 You would think that is -- that in all large law firms  
8 today, there is all sorts of conflict-resolution computer  
9 equipment, which allows large law firms to plug in a name and  
10 to see if anyone else either represents that person or defends  
11 that person or has that person as a witness in any capacity.  
12 That is in civil law firms and it is, to my knowledge, applied  
13 in other U.S. Attorney's Offices in this country.

14 This office did not have that at that time. You would  
15 think that this office, because of the notoriety of this case,  
16 because you're charging a police officer, would have  
17 supervisors who would discuss the ongoing cases just in case a  
18 problem like this arises, that a supervisor would know which  
19 cases are being tried, who are the main players in the cases,  
20 who was a suspect in a particular case.

21 I believe that it would have been difficult, not  
22 impossible, but difficult on February 1st to identify  
23 Mr. Santiful. It could have been done, but it would have been  
24 difficult.

25 Clearly, I believe by February 2nd, February 3rd,

1 February 4th, February 5th, February 6th, February 7th that  
2 Mr. Santiful's identity as a defendant, upcoming defendant who  
3 had a gun on Aiken Street should have been disclosed or obvious  
4 within the U.S. Attorney's Office in this district.

5 It is not the largest district. It's a busy district.  
6 We have hardworking Assistant U.S. Attorneys, but these are  
7 matters that are very important to a fair defense and to the  
8 public.

9 If I would have had that information, even after  
10 Santiful testified, you could see from the video, it is just --  
11 it's an incredible tool. It just discounts completely his  
12 testimony and his credibility. It shows that he lied on the  
13 witness stand. Completely. He lied about 2006. He lied about  
14 2015.

15 And, again, he's really lying to you all as to what  
16 he's doing on February 1st of 2018. But what he's doing is  
17 instructing people where to put a gun on Aiken Street.

18 **THE COURT:** What specific question was he asked that  
19 you can point to me from the transcript that he --

20 **MR. PURPURA:** I can't. And the reason I can't is  
21 because I've been defending cases for 35, 37 years, and I'm not  
22 going to ask Mr. Santiful, who lies without any basis, which I  
23 had nothing at that time, isn't it a fact, you know, that  
24 you're still out there dealing drugs when he's going to look at  
25 me and say he's going to give them hopefully what he told the



1 Government, a lie, say, No, I'm working two jobs.

2           There's no basis. I didn't have that basis. They had  
3 that basis. Maybe not this group (indicating), but another  
4 group in his office had that basis.

5           **THE COURT:** I'm just trying to pin down.

6           **MR. PURPURA:** I know.

7           **THE COURT:** You had said to me that Mr. Santiful  
8 perjured himself on the stand on February 1st, and that would  
9 normally imply it's a question that was asked and an answer  
10 that was given that was willfully false.

11           I understand your argument about the disclosures and  
12 duties to reveal, but I just --

13           **MR. PURPURA:** He perjured -- I believe, again, that  
14 he, based on what we know now is Santiful's doing, again on  
15 Aiken Street -- and if you were asked in a trial, a court  
16 trial, to determine whether Mr. Santiful -- I shouldn't ask you  
17 this -- whether Mr. Santiful perjured himself when Mr. Santiful  
18 told this jury that that gun wasn't his on November 28th, 2015,  
19 and that drugs, he had no part in those drugs, he perjured  
20 himself.

21           When he told that jury in -- told that jury that --  
22 2006 that Jenkins must have placed that gun on me, that I  
23 didn't have that gun, that I took the plea to get out of jail,  
24 he perjured himself.

25           We don't know that perhaps by direct evidence, but we

1 certainly know that by circumstantial evidence. And it's  
2 certainly corroborated by the tape in 2018, when he's on that  
3 same darn corner with a gun giving it to one of his workers.

4 Now, if the Government's up here, that's perjury.

5 Respectfully, I believe what occurred was material. I  
6 believe that not only affected Santiful's testimony, but it  
7 affected the credibility of Herbert Tate, who testified about  
8 an incident the day before.

9 I believe that the information is clearly favorable,  
10 at least as impeachment evidence. And here, incredibly, on a  
11 street video, the same block, very substantial impeaching  
12 evidence.

13 And I believe that regardless -- and I don't believe  
14 it's bad faith, but regardless whether it's good faith or bad  
15 faith, it was information that was in the hands of this  
16 U.S. Attorney's Office and it was suppressed.

17 Thank you.

18 **THE COURT:** Thank you, Mr. Purpura.

19 Mr. Wise.

20 **MR. WISE:** So Mr. Purpura said regardless of whether  
21 it was good faith or bad faith, it was suppressed. So let me  
22 be very clear, there was no bad faith and nothing was  
23 suppressed, as Mr. Purpura well knows.

24 Mr. Santiful was seen on this pole camera on February  
25 the 1st. That was memorial -- and he was identified for the

1 first time on February the 1st. The first time.

2 It was memorialized in a report on July the 8th -- on  
3 February the 8th, a week after he testified. As Mr. Purpura  
4 knows, that report was then presented for the first time to the  
5 U.S. Attorney's Office on February the 13th, the day after the  
6 jury returned their verdict.

7 As Mr. Purpura knows, that information that  
8 Mr. Santiful had been seen on this pole camera was not  
9 communicated in any form prior to February the 13th.

10 So knowing all that, Mr. Purpura stands up here and  
11 says information was suppressed and supervisors should have  
12 been talking to one another and there should have been a  
13 computer system.

14 But there was nothing before February the 13th that  
15 put Mr. Santiful on anyone's radar in the U.S. Attorney's  
16 Office. So all this talk about we don't have a system and --  
17 but supervisors should have known and they were in the  
18 courtroom, it's all nonsense, and he knows that.

19 There was so much of what he just argued that was  
20 inaccurate. And Your Honor seized on one of it. He first said  
21 that Santiful lied to the jury and then he went even further  
22 and said he perjured himself.

23 Now, I have read the entire transcript of his direct  
24 and cross. He was never asked about February of 2018. Maybe  
25 Mr. Purpura intended to. Maybe he thought he did. Maybe he

1 made a strategic decision not to, but he was never asked about  
2 February of 2018 and whether he was involved in criminal  
3 activity.

4 And the idea that Mr. Purpura wouldn't go at a witness  
5 on that -- he did that to Hamilton. He said you're still  
6 dealing drugs, you're still in the game. He did that to  
7 witness after witness.

8 So the idea that he wouldn't take a flyer at Santiful  
9 I think is laughable.

10 So there was no perjury. And I would point out that  
11 in the category of "other unprofessional accusations," in his  
12 filing he said we may have suborned perjury. He said that  
13 before he had any facts or an ounce of support for it, and then  
14 he doubled down on it by saying it may have been in bad faith  
15 that we suppressed evidence.

16 He could have asked him about 2018, and he didn't. So  
17 there was no perjury. There was no lie about 2018. And the  
18 idea that somehow -- the fact that he was seen on this  
19 pole camera in 2018 magically means that three years earlier,  
20 he was dealing drugs at the same time, well, it just doesn't,  
21 and he knows that.

22 The accusation in 2015 was that he had a gun in a car  
23 and then Hersl robbed him.

24 What he was seen in February of 2018 is -- is handling  
25 a gun. Those are three years apart.

1 But the allegation in this case was that Hersl robbed  
2 him. He wasn't on trial for a drug crime -- for a gun crime.

3 And this issue of the prior conviction, we tried. We  
4 moved to keep out the 2006 conviction 'cause we didn't think it  
5 was covered by 609. He opposed. He went into it. He knew  
6 full well Jenkins was one of the arresting officers.

7 You know, and in a patronizing way he said, oh, well,  
8 I'm sure the Government didn't see the statement of probable  
9 'cause because they would have realized and therefore not asked  
10 the question, which was in response to his line of cross which  
11 we tried to -- which we didn't think he should have gone down  
12 this road to begin with, frankly, 'cause Jenkins was involved.  
13 And then he said, well, if we'd seen the statement of probable  
14 cause, we would have known that this other officer was the one  
15 who recovered it.

16 Your Honor, I have seen in the course of this case so  
17 many statements of probable cause that bear little to no  
18 resemblance to what really went on in these episodes, that, you  
19 know, it was almost like -- I mean, I remember at the bench,  
20 when this first came up -- and I think it was Taylor's  
21 attorneys who said, well, what's the evidence that Jenkins  
22 planted the gun? And I think everybody's jaws dropped.

23 So they went down this road. And to then say, well,  
24 that -- somehow they were prejudiced because we redirected on  
25 it I think is also just preposterous.

1           So when you reduce -- when you reduce all the rhetoric  
2 to what actually happened and to the law on this topic, there  
3 was no information that could have been disclosed in the  
4 organization's hands before February the 13th.

5           And Mr. Purpura said, well, you know -- and I wrote  
6 down what he wrote, It could have been done. Well, you know,  
7 if an ATF agent has a pole camera up and they're watching it  
8 and then they write a report a week later and then they present  
9 that report to the U.S. Attorney's Office, how exactly was that  
10 information supposed to have been known to us prior to the  
11 13th? I mean, he never addresses that because -- there's a  
12 practical dimension to all of this. It would have been  
13 impossible.

14           So at the end of the day, there's no "there" there.

15           And as Your Honor cited in the previous hearing -- and  
16 I think Wolf was the most recent Fourth Circuit decision,  
17 860 F.3d 175 -- the standard they have to meet, which he didn't  
18 address, was, one, that the evidence was favorable either  
19 because it was exculpatory or impeaching; two, because it  
20 was -- that it was material to the defense; i.e., prejudice  
21 must have ensued; and, three, that the prosecution had the  
22 materials and failed to disclose them.

23           So he obviously loses on three. We didn't have them.  
24 We didn't fail to disclose them.

25           I think he loses on two as well.

1           The jury found Mr. Hersl guilty of Racketeering Act 3,  
2 proved -- that we proved Racketeering Act 3, which was the  
3 robbery of Jimmie Griffin; Racketeering Act 4, which was the  
4 robbery of Herbert Tate; obviously Racketeering Act 5, which  
5 was the robbery of Antonio Santiful; and Racketeering Act 10,  
6 the robbery of Ronald and Nancy Hamilton; as well as  
7 Racketeering Acts 14, 15, 18, and 21. All of those were in the  
8 substantive RICO count, Count 2. Only two are required by the  
9 law to have found him guilty.

10           The jury also found him guilty of the conspiracy  
11 count, which did not include, did not include the Santiful  
12 episode because Mr. Hersl robbed people before he joined the  
13 GTTF and the conspiracy tracked Wayne Jenkins and the other  
14 officers he brought with him.

15           And then, of course, the jury also found him guilty of  
16 Count 5, the Hobbs Act robbery of the Hamiltons.

17           So it would not have changed the outcome of the trial  
18 to have had the information that we did not have to allow  
19 Mr. Purpura to impeach a witness that he had vigorously  
20 impeached up until that point, like he did with all of them,  
21 which was his right.

22           And this is hardly bombshell information in a case  
23 about police officers targeting drug dealers to rob them, that  
24 this man was involved in criminal conduct.

25           And this idea that he's somehow a major player, I

1 mean, again, this is all just stuff that's coming out of the  
2 ether. They didn't know who he was on February the 1st.

3 And Mr. Purpura said, well, the Government alleges he  
4 was involved in a conspiracy starting in November of 2017, and  
5 Your Honor had to point out, no, the substantive counts are in  
6 March.

7 But the reason he had to be identified on February the  
8 1st is there is no evidence of his involvement in this before  
9 February the 1st. They didn't know who he was, so he wasn't a  
10 kingpin. He wasn't a target. He was some guy that showed up  
11 on a pole camera and then they had to scramble to figure out  
12 who he even was. That's how significant he was to this  
13 investigation.

14 And, Your Honor, if we may approach, there's one other  
15 issue I want to put on a sealed record related to this motion.

16 (Sealed bench conference.)

17 **MR. WISE:** Thank you, Your Honor.

18 (The defendant conferred with counsel.)

19 **MR. PURPURA:** Your Honor, can we just approach the  
20 bench for one moment?

21 **THE COURT:** Okay.

22 (Sealed bench conference.)

23 **MR. PURPURA:** Just briefly, if I may, Judge.

24 **THE COURT:** Sure.

25 **MR. PURPURA:** Thank you.



1 Not to beat a dead horse, when the issue first came  
2 up, I believe we probably put in our -- we did put in our  
3 pleadings it possibly could have been intentional -- the intent  
4 of the Government to hide this information.

5 We didn't know at that time -- I indicated clearly  
6 that I -- it was -- there was no indication at all that the  
7 Government had the information, that they intended to hide that  
8 information from defense counsel about Mr. Santiful. There's  
9 just no question about that. I'm not sure [sic] Mr. Wise was  
10 going with that, but that's not the allegation, never has been  
11 the allegation in this particular case.

12 As far as why we did not -- and I did not ask  
13 Mr. Santiful about current drug trafficking, because it can --  
14 I didn't have a single basis in the world to respond when he  
15 would tell me -- and I think lied to me at that point -- that  
16 he's no longer drug -- dealing drugs and he's working, you  
17 know, two different, legitimate jobs. So I didn't have a  
18 basis.

19 Unlike Hamilton, who I did cross-examine thoroughly  
20 when he said he denied trafficking drugs, I had a substantial  
21 basis. I had his records from his tax returns for three years  
22 prior to that where there's a minimal amount of money. I have  
23 the records from the casino where he's gambling nearly a  
24 million dollars a year at the casinos right here in Baltimore.

25 I had photographs of his house, which was well beyond

1 his means at that particular time. So I had a very substantial  
2 basis to cross-examine, that's why I did on those particular  
3 issues. I didn't have that.

4 We were led to believe, through the direct  
5 examination, that this man was a civilian and he was  
6 rehabilitated and he was doing good out there. That's what we  
7 were led to believe. It's a different story now.

8 That's all. Thank you, Your Honor.

9 **MR. WISE:** Just briefly, if I may, Your Honor.

10 The Court, nor the jury, were led to believe anything.  
11 This witness testified under oath and he was asked questions.  
12 He looks like a lot of people in this city, which is someone  
13 with a criminal record who's on the margins, and that's who  
14 these people -- that's who this defendant and his co-defendants  
15 targeted.

16 And he testified from that stand about what he did in  
17 2015. And there's no evidence, no evidence that he lied about  
18 what happened in 2015.

19 **THE COURT:** All right. The controlling case law is  
20 set forth, I believe, in United States versus Wolf, as has been  
21 indicated, which is at 860 F.3d 175, a Fourth Circuit opinion  
22 from 2017.

23 There are several things that need to be shown in  
24 order to meet the standard for a new trial based on an alleged  
25 violation of a duty to disclose evidence by the prosecution.

1 First of all, the defendant needs to show that the  
2 information, the undisclosed evidence, was favorable in the  
3 sense of being exculpatory or impeaching. And I will assume  
4 that the undisclosed evidence, that being Mr. Santiful's  
5 handling of a handgun, as captured by a pole camera on  
6 February 1st of 2018, was impeaching, could have been  
7 impeaching in some sense.

8 It also must be shown, and I'll jump to the third  
9 prong, that the prosecution had the materials and failed to  
10 disclose them. We don't have that.

11 The evidence in this case of the sequence of events  
12 does establish that apparently -- and apparently what is shown  
13 on the pole camera, at least in the view of Government agents,  
14 does show an individual they identify as Mr. Santiful in the  
15 possession of a gun, perhaps transferring it to someone else.  
16 That occurred the same day that he testified in this court.

17 The report was not written up until February 8th, as I  
18 recall. It is in a separate investigation, handled by  
19 different prosecutors and a different law enforcement agency.  
20 Although, of course, they are all in the same U.S. Attorney's  
21 Office here in Maryland, the prosecutors.

22 It was not disclosed to any Assistant U.S. Attorney,  
23 based on the evidence in front of me, until February 13th of  
24 2018, after the jury's verdict in this case. And that's what  
25 we have.

1 I am not aware of anything relating to a prosecutor's  
2 duty to disclose that would have required in some way the ATF  
3 or a supervisor to recognize the significance of this as to  
4 Mr. Santiful and somehow get it to the prosecutors before this  
5 trial is over. And, in any event, they didn't. There's just  
6 no indication of that whatsoever.

7 But even assuming that somehow that third prong were  
8 satisfied, the evidence must be material to the defense. It  
9 must be prejudicial in the sense that it might reasonably have  
10 changed the result of the proceedings, and there is no evidence  
11 of that in this case either.

12 There was very strong evidence as to a number of  
13 robberies in this case carried out by Mr. Hersl, very strong  
14 evidence as to wire fraud. All of that supports the  
15 racketeering charge.

16 The racketeering conspiracy, as indicated, didn't  
17 include Mr. Santiful. Now, that might or might not be  
18 controlling if Mr. Santiful were otherwise a very critical part  
19 of the case such that any question as to his veracity could  
20 cast doubt on all the rest, but that is not true here either.  
21 There was simply very, very strong evidence.

22 And Mr. Santiful was also not involved in the evidence  
23 supporting the Hobbs Act robbery. I just don't find any reason  
24 to believe that had this evidence been disclosed in time for  
25 Mr. Purpura to use it on cross-examination, it would have had

1 any likelihood of changing the result, changing the verdict in  
2 this case.

3 And while I understand it is not a current claim by  
4 Mr. Purpura, a couple other things. There is no evidence of  
5 bad faith by the prosecutors. There is no perjury, as I  
6 understand that legally, to have been proved in this case.  
7 Certainly no suborning of perjury by the Government in any way.

8 So just to be clear about that -- and I take from what  
9 Mr. Purpura said recently, he's not claiming any intentional  
10 suppression of evidence by the Government. I certainly find  
11 none.

12 And I would also point out that Mr. Santiful, it was  
13 brought out that he had two prior convictions for narcotics  
14 and -- one for narcotics and one for drugs, I believe.

15 My recollection of the 2006 conviction and how that  
16 came out is consistent with the Government's, that there was an  
17 objection to it coming out at all; and then once it did, they  
18 wished to point out that it appears that Sergeant Jenkins was  
19 involved to some extent in that earlier conviction, and I think  
20 all were matters of credibility that were appropriate for the  
21 jury to hear and consider.

22 So I'm denying the motion for a new trial for those  
23 reasons in this case.

24 All right. Then I think we should proceed with the  
25 sentencing. Let me turn to that.

1 All right. We can begin the conversation as to  
2 sentencing.

3 First of all, of course, we're here for sentencing for  
4 Mr. Hersl on three convictions: Count 1 being a racketeering  
5 conspiracy; Count 2 being racketeering; Count 5, a  
6 Hobbs Act robbery.

7 There is, of course, a presentence report. There are  
8 certain advisory calculations, guideline calculations made in  
9 that presentence report. And I understand there are objections  
10 to some of the calculations which we can take up in a minute.

11 Before that, let me just be clear for the record,  
12 obviously -- and I'm looking at an amended presentence report  
13 dated June 13th of 2018.

14 Just for the record, Mr. Purpura, obviously you've  
15 read this. I assume your client also has had the chance to  
16 discuss this with you?

17 **MR. PURPURA:** I have read the report. Mr. Hersl has  
18 thoroughly reviewed the report with me. I let him know about  
19 the minor amendment on June 13th, 2018, and actually how it  
20 helps him and doesn't hurt him. So we've reviewed everything,  
21 yes.

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

23 Does the Government, other than the guideline issue,  
24 have any additions, corrections, or modifications?

25 **MR. WISE:** No, Your Honor. Thank you.

1           **THE COURT:** Okay. All right. Well, let me hear  
2 whatever argument everyone would like to make.

3           Let me just say, as I understand the calculations in  
4 the current presentence report -- and then there are these  
5 groupings, of course -- we're starting at an offense level of  
6 20 because of the robbery, and I believe that that is not  
7 contested; there is an increase of five for the use of a  
8 firearm, which is; there is an increase of two for persons  
9 being restrained, which is -- contested, that is; there is an  
10 increase of two for abuse of a position of trust, which I  
11 believe is not; and an increase of two for obstruction of  
12 justice, which I believe is not contested.

13           Then there is one point assessed for the loss being  
14 greater than \$20,000 in one of the specific robberies, and I  
15 believe that increase of one is contested.

16           And in addition, the presentence report does not award  
17 a two-level downward adjustment for acceptance of  
18 responsibility, and I believe that is contested.

19           But, Mr. Purpura, tell me yes, no. What would you  
20 like to be heard on?

21           **MR. PURPURA:** Your Honor, the one issue I just briefly  
22 need to be heard on has to be done at the bench, if we can  
23 approach again?

24           **THE COURT:** Sure.

25           (Sealed bench conference.)

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

2           As I indicated at the bench, as to the other  
3 objections to the guidelines calculations, I noted those  
4 objections to the best of my ability on my letter to the Court  
5 of June 11th, 2018. And aside from that, I wish to make no  
6 further record on those particular objections.

7           If the Court, as I indicated in the letter, sees fit  
8 to deny the objections, then I will eventually ask the Court to  
9 consider these under other sentencing factors.

10           **THE COURT:** I understand that. I guess I'd like to  
11 clarify one thing or hear from you. I was slightly confused  
12 between the -- for me, at least, between a couple versions of  
13 the presentence report.

14           In terms of the loss being greater than 20,000, there  
15 initially was two points assessed.

16           **MR. PURPURA:** Right. That was just an error.

17           **THE COURT:** Was just an error.

18           **MR. PURPURA:** That just --

19           **THE COURT:** Right.

20           **MR. PURPURA:** -- was an error. I mean, more than  
21 20,000 should be one point.

22           **THE COURT:** Okay. And do you still -- do you have an  
23 objection to it being more than 20,000?

24           **MR. PURPURA:** Well, the objection -- you heard the  
25 evidence. 20,000 was taken in cash. Mr. Hersl received



1 somewhere around \$3,000 of the \$20,000, depending on whose  
2 story you believe.

3 And then, in addition, after the money was taken and  
4 the detectives are in the car, about to leave, we know that  
5 Detective Rayam then goes back into the house and takes a  
6 watch. And the watch is of value. This is the watch which was  
7 found apparently off the pier, that -- you know, greater  
8 than -- whatever the amount of watch that was taken in excess  
9 of 20,000. I understand 1B1.3, that is relevant conduct. So  
10 that's . . .

11 **MR. WISE:** And it was Jenkins who stole the watch --

12 **MR. PURPURA:** It was Jenkins.

13 **MR. WISE:** -- and gave it to Stepp to sell, and then  
14 the FBI divers found it sunken off the Stepp's docket.

15 **MR. PURPURA:** Regardless of who found it, it wasn't, I  
16 found the watch, we'll sell it and split the proceeds. It was  
17 really -- so that's the point. Whether that's a 3553 factor --  
18 because, again, what I suggested, this -- all these points are  
19 hugely accumulative and they just raise the guidelines  
20 astronomically.

21 Judge, thank you.

22 **THE COURT:** Okay. All right. Does the Government  
23 want to be heard on any of the issues that at the moment lead  
24 to I think an offense level of 37, criminal history category of  
25 I, a range of 210 to 262 months?

1           **MR. WISE:** Your Honor, we submitted Document 432,  
2 which was our response to their objections.

3           **THE COURT:** I did review that.

4           **MR. WISE:** And absent any questions from the Court,  
5 we're happy to rest on that. We believe all the enhancements  
6 are appropriate. They have been levied against co-defendants.  
7 And we think the facts support them under the guidelines.

8           **THE COURT:** I did note -- and I think this is just a  
9 typo in the presentence report -- that although the bottom line  
10 is 37, Paragraph 75 still says Offense Level 38, but we are not  
11 there. Okay.

12           All right. Well, yes, I did read, of course, both  
13 Mr. Purpura's objections and the Government's response. I do  
14 think the enhancements are appropriately applied in this case.  
15 There clearly was the use of a gun. Whether or not one was  
16 pulled out or visible at the specific time of each robbery,  
17 clearly these were armed police officers, including Mr. Hersl,  
18 and the people involved in these situations knew that. They  
19 were, in fact, restrained either in handcuffs or just by the  
20 physical presence of Mr. Hersl and others.

21           There was obviously abuse of a position of trust,  
22 obviously obstruction of justice, and the -- I do believe that  
23 looking at reasonable foreseeability and relevant conduct that  
24 the additional one-level enhancement for the loss being over  
25 the \$20,000 is warranted as far as the guidelines go.

1           As far as the guidelines go, I don't think what has  
2 been related to me amounts to acceptance of responsibility in  
3 this case by Mr. Hersl. There were vigorous challenges to a  
4 number of the legal theories and some of the evidence presented  
5 in this case.

6           So I do think that we are correctly at an  
7 Offense Level 37, criminal history category of I, and advisory  
8 guideline range of 210 to 262 months.

9           The guidelines are only one factor. Obviously, I have  
10 to decide a sentence that is reasonable under 3553(a) and  
11 something that takes into account relative culpability.

12           I have received and read Mr. Hersl's sentencing  
13 memorandum and a number of letters. I don't think the  
14 Government has submitted a sentencing memorandum other than to  
15 respond to the objections.

16           So let me start with the Government. If you'd like to  
17 tell me your specific recommendation in this case.

18           **MR. WISE:** Yes, Your Honor. Thank you.

19           Your Honor, Your Honor heard Jimmie Griffin testify at  
20 trial under oath that Daniel Hersl robbed him, stealing more  
21 than \$5,000 off his person, and then later an additional \$2,000  
22 from his home, and the jury believed Jimmie Griffin and  
23 convicted Defendant Hersl of robbing him in Racketeering Act 3.

24           But Jimmie Griffin also testified that after Hersl  
25 robbed him, Hersl told another officer that Griffin hid things

1 in his rectum and told the other officer to search it.

2 Now, the other officer had the decency not to do it  
3 because it wasn't true. Hersl didn't know that Jimmie Griffin  
4 was someone who hid things in his rectum.

5 Now, it wasn't enough that Hersl took his money. He  
6 wanted to take this man's dignity. He wanted this other  
7 officer to physically violate him. It was an act of sadism,  
8 and nothing more, to demean this person, because Hersl, as we  
9 heard over and over again during this trial, devalued people  
10 like Jimmie Griffin and he thought the law didn't protect them  
11 and he abused his power to prey on them. That's what he did.

12 Your Honor also heard from Hersl Tate -- from  
13 Herbert Tate, who was talked about at length in a way I,  
14 frankly, couldn't follow by Mr. Purpura on the issue of the new  
15 trial. Herbert Tate's testimony had nothing to do with  
16 Antonio Santiful.

17 The remarkable thing was that Herbert Tate was robbed  
18 the very day before Antonio Santiful. And I think the fact  
19 that this happened again and again speaks to how widespread it  
20 was in Mr. Hersl's police practices.

21 Herbert Tate testified that Hersl robbed him on  
22 November 27th and that he planted drugs on him, that Hersl  
23 planted drugs on him, and that as a result of the false charges  
24 that were ultimately thrown out, Tate was incarcerated for four  
25 days, he lost his job, he lost his home, and ultimately he left

1 the city and doesn't live here anymore. And the jury, like  
2 Jimmie Griffin, believed Herbert Tate and convicted  
3 Defendant Hersl of Racketeering Act 4.

4 And Herbert Tate also testified to -- two days earlier  
5 to being robbed. Defendant Hersl stopped him, stuck his  
6 fingers in his mouth, stuck his hands down his pants, all of  
7 this on a city street, and told him, If you ever come back to  
8 this neighborhood again, you're going to jail. And Hersl kept  
9 his word. He arrested him the next time he saw him, he falsely  
10 claimed that Tate had drugs on him.

11 And the bottom line is Defendant Hersl didn't get to  
12 decide where Herbert Tate could go, but he did that because he  
13 didn't value people like Herbert Tate and because he abused his  
14 power to prey on them.

15 And, in fact, what we learned through the course of  
16 the trial was, you know, he devalued all of us suckers, I  
17 guess, that pay taxes in this city and in the entire state when  
18 he and the other members of the Gun Trace Task Force bilked the  
19 police department of tens of thousands -- cumulatively hundreds  
20 of thousands of dollars of false overtime.

21 But Defendant Hersl did them one better. In addition  
22 to showing up in the middle of the shift or at the end of the  
23 day, in addition to leaving early and claiming overtime, we  
24 learned in the course of the trial that for an entire month, he  
25 worked on his new home while on the clock.

1           So when children in Baltimore sit in schools that  
2 aren't heated, one of the reasons -- you know, the  
3 Board of Estimates just had to approve another \$21 million in  
4 police overtime -- is because of the behavior of people like  
5 Mr. Hersl.

6           You know, the theme of the defense at trial and in  
7 their sentencing memorandum was that these robberies were  
8 somehow incidental to otherwise legitimate policing, that they  
9 were -- they were bad judgment after the fact. This is what  
10 Hersl argued, that he was a good police officer making good  
11 arrests, taking guns off the street, and that this kind of  
12 moral lapse was something apart and aside from that.

13           But the fact is these were robberies; and the people,  
14 the victims that they targeted, knew that.

15           And the impact of these robberies on these victims was  
16 the same as it would be if they didn't have badges and didn't  
17 have guns, and that was most vividly on display in the case of  
18 Mr. Hamilton.

19           In his sentencing memorandum, Mr. Hersl again tried to  
20 minimize his role in this robbery, the robbery that the jury  
21 found him guilty of in the substantive count.

22           The sentencing memorandum claimed that, you know, he  
23 did this on instructions that he and Clewell received. Well,  
24 as was pointed out at trial, Clewell was sent to the dud house.  
25 Hersl was picked to be part of the robbery team that went to

1 the house with the cash.

2 And Hersl was the one that sat with the Hamiltons  
3 while they were handcuffed in their living room, while the rest  
4 of the GTTF, like the gang of thieves they were, moved through  
5 their house looking for money. And he played a crucial role in  
6 that robbery.

7 And Your Honor heard from Mr. Hamilton, and he was  
8 pressed and pressed and pressed about this house he had and  
9 how -- and Mr. Purpura said it again, how someone like that  
10 didn't deserve a house like that and that meant he --

11 **MR. PURPURA:** Judge, I object.

12 **THE COURT:** No, he didn't say that.

13 **MR. WISE:** And we heard question after question that  
14 suggested he must be a drug dealer, because you can't have a  
15 house in Carroll County if you go to the casino like he said  
16 and worked the jobs he said he did but weren't a drug dealer.

17 And he finally just lost it. And the jury was -- the  
18 testimony was stricken from the record, but Your Honor heard  
19 it.

20 And what he said was, "This destroyed my whole family.  
21 I am in a divorce process right now because of this" -- and he  
22 used an expletive. "This destroyed my whole f'ing family. You  
23 sit here asking me questions about an f'ing house, my f'ing  
24 wife stays in the f'ing Walmart every f'ing night until I come  
25 home. If you want to know that, worry about that. That's what

1 the F's the matter in here, man. Everybody's life is  
2 destroyed, man. My house don't have nothing to do with this.  
3 The problem is my wife is taking medication 'cause of this.  
4 Man, I'm sorry, Your Honor, I'm sorry to the courts, but the  
5 fact of the matter is my house don't have nothing to do with  
6 it. The fact of the matter is they came in my house, destroyed  
7 my family. I'm in a divorce process now because of this. This  
8 has put so much financial pressure on my family. Kids, man,  
9 are scared to go in the house because of this."

10 This wasn't legitimate police work with an incidental  
11 lapse in judgment afterwards. These were armed robberies that  
12 devastated the people that were victimized.

13 And these are just -- the three people I've just  
14 talked about, Griffin and Tate and Hamilton, are just three of  
15 the individual victims.

16 But as Your Honor knows, as has been discussed at the  
17 prior sentencings, the harm in this case goes so far beyond the  
18 individual victims in this case.

19 I briefly addressed a couple of the contentions in the  
20 defendant's sentencing memo, but there are a few others that I  
21 think we're compelled to respond to.

22 On Page 1 the defendant writes, "Whether Mr. Hersl  
23 viewed his conduct to be theft of tainted drug money or a  
24 robbery, he acknowledged there's no excuse."

25 Well, you know, even in arguing that he somehow has



1 accepted what he did, he can't give up this specious argument  
2 that he was entitled to do what he did because it was tainted  
3 drug money. You know, like that somehow matters, that somehow  
4 matters and makes the fact that he took the money okay.

5           You know, these were police officers. They weren't  
6 pirates. They weren't entitled to take what they thought was  
7 tainted drug money.

8           And as he has all throughout, he tries to shift blame  
9 to others. Also, just on Page 1, the very first page of their  
10 sentencing submission, Mr. Purpura writes, "In this case, to  
11 the horror of this court and to the public who followed the  
12 proceedings, a culture of criminal behavior in the  
13 Baltimore City Police Department, apparently condoned by  
14 supervisors, was revealed."

15           Well, where is the defendant's conduct in that  
16 statement? Where is the defendant taking responsibility for  
17 any of this?

18           The trial revealed his criminal behavior. And  
19 supervisors like Allers and Jenkins, who were charged, unlike  
20 Hersl, accepted responsibility for what they did.

21           And then -- and I thought this was one of the more  
22 remarkable ones -- in the sentencing memorandum the defendant  
23 argues, "This court, as well as the citizens of Baltimore who  
24 followed this very public trial, were able to witness the  
25 vulnerability of men who are placed in positions of trust."

1           You know, I read that and I thought I must have gone  
2 to a different trial. The trial didn't expose the  
3 vulnerability of men like Hersl. It exposed the vulnerability  
4 of the community that they victimized. That's what was on full  
5 display in this trial.

6           And so as in any sentencing, the factors the Court  
7 must consider, some of which I've already addressed, are the  
8 nature and circumstances of the offense and the history and  
9 characteristics of the defendant, the need for the sentence  
10 imposed to reflect the seriousness of the offense, to promote  
11 respect for the law, and to provide just punishment for the  
12 offense to afford adequate deterrence, and to avoid unwarranted  
13 sentencing disparities among defendants with similar records  
14 who have been found guilty of similar conduct.

15           And I'll briefly address each of those.

16           I've already spoken to the nature and circumstances of  
17 the offense as to a number of the robberies.

18           In the presentence report, and as was shown at trial,  
19 Defendant Hersl robbed people before he joined the  
20 Gun Trace Task Force. And he was unique among the defendants  
21 in the sense that he did this on his own. He did it in such a  
22 way that he was brazen enough to do it when other officers were  
23 around.

24           The other officers that testified -- the evidence of  
25 other officers engaging in pre-Gun Trace Task Force robberies

1 were exclusively with one another. Hendrix did it, Ward did  
2 it, Taylor did it all before they joined the  
3 Gun Trace Task Force. And Rayam and Gondo did it.

4 But he was unique in the sense that we heard not one,  
5 not two, but three instances where, with other police officers  
6 on the scene, he was brazen enough to rob -- to rob arrestees  
7 right off their persons. And he did that on his own. He  
8 didn't -- he wasn't under the sway of Jenkins or any of the  
9 other arguments we've heard.

10 And so starting at Paragraph 7, the presentence  
11 report, and as Your Honor heard at trial, outlines those  
12 robberies, the November 5th robbery of Jimmie Griffin, which  
13 I've talked about, obviously; the November 27th, 2015, robbery  
14 of Herbert Tate, which I've addressed; and then the robbery of  
15 Antonio Santiful.

16 And he took everything from small amounts of money, a  
17 couple of hundred dollars, to thousands of dollars just in that  
18 pre-GTTF series of robberies.

19 And then he joined the GTTF. And, again, in a sort of  
20 tragedy for the people in this city and for this department,  
21 you had on the GTTF this collection of officers, all of whom,  
22 before they joined this unit, had robbed people at various  
23 points in their careers.

24 And they very quickly got comfortable with one  
25 another. Jenkins got comfortable with him. Rayam and Gondo

1 got comfortable with him. And they then began robbing people  
2 together.

3 And the Court heard about those robberies and  
4 attempted robberies that began almost immediately. And the  
5 actual successful robberies, obviously the most dramatic was  
6 the robbery of the Hamiltons at their home where this, you  
7 know, couple was pulled out of a Home Depot and taken from the  
8 Home Depot to this location that doesn't look like a police  
9 department and interrogated, taken back to their home, sort of  
10 dragged from one location to another until \$20,000 and an  
11 expensive watch was stolen from them.

12 Nothing was ever found. No charges were ever filed.  
13 It, in a sense, amounts to a kidnapping, and I think that's how  
14 they felt about it. And the ongoing effects are obviously what  
15 they are.

16 Your Honor also heard at the trial about an attempted  
17 robbery on July the 25th of a condominium on Boston Street, and  
18 I think that demonstrates that they were actively looking for  
19 targets, not, as Mr. Purpura argues, that they just sometimes  
20 took money when -- you know, when they had otherwise engaged in  
21 a legitimate law enforcement operation.

22 Your Honor heard those recordings about the  
23 Boston Street robbery. Again, how Jenkins picked who he wanted  
24 on the team, and it was Hersl and it was -- and it was Rayam.

25 And the anticipation that this was going to be a big

1 score because the people in this condominium, which is in a  
2 nice part of Baltimore, had an expensive car and that meant  
3 there was probably going to be money to take, and that's what  
4 drove -- and you could hear it in their voices -- it's what  
5 drove them and what drove them on that evening.

6 And then the August 8th robbery of Dennis Armstrong,  
7 this is where money was stolen from his van and then split in  
8 the parking lot of a high school between Hersl and Rayam.

9 This is also where drugs were stolen, and Hersl knew  
10 that. The testimony was that -- from Stepp that Jenkins told  
11 Stepp he had to give Hersl some of the drug proceeds and that  
12 Hersl had complained that Stepp had left behind 4 ounces of  
13 cocaine when Stepp broke into the storage locker, in a kind of  
14 double-cross, while the rest of the GTTF were waiting to get  
15 their warrant to go into it and more than likely or almost  
16 inevitably rob it.

17 And, of course, then there's the time and attendance  
18 fraud, which, as I said, was egregious for all of them but was  
19 particularly egregious for Mr. Hersl.

20 **THE COURT:** Going back to Dennis Armstrong for just a  
21 moment.

22 **MR. WISE:** Sure.

23 **THE COURT:** Am I correct that the jury did not find --

24 **MR. WISE:** That's correct, Your Honor.

25 **THE COURT:** -- Mr. Hersl guilty as to that particular

1 racketeering act?

2 **MR. WISE:** That's correct. As we argued, Your Honor,  
3 the evidence that he was robbed is essentially uncontested. I  
4 think the way we understand the jury's verdict is robbery  
5 requires taking from the presence of an individual. And the  
6 testimony was that the money was split up after Armstrong was  
7 taken from the scene in the parking lot of this high school.

8 We think the Court can consider that evidence and  
9 certainly consider the fact that that robbery occurred, which  
10 in Mr. Purpura's opening he conceded did occur in making the  
11 sentencing determination.

12 **THE COURT:** Well, again, he'll correct me, there may  
13 have been at least a concession that Mr. Hersl got some  
14 proceeds, got some money from this event.

15 **MR. WISE:** That's right. That's right.

16 **THE COURT:** Not that it was a robbery. Okay.

17 **MR. WISE:** That's right. That's right, Your Honor.

18 And as I said, the time and attendance fraud was most  
19 egregious for Mr. Hersl, 'cause in addition to participating in  
20 the scheme that they all participated in of starting their  
21 shifts late, coming in sometimes after the entire regular day  
22 had gone by, and then just burning overtime and then not  
23 working even the hours they claimed, he, as we went through in  
24 detail, hardly set foot in Baltimore for an entire month when  
25 he was working on a new home he purchased and was showed

1 receipts of trips in the middle of the shift to the Home Depot  
2 out there and his location.

3 So the nature and circumstances of the offense as to  
4 this particular defendant are particularly egregious.

5 In terms of his history and characteristics, he was  
6 the most senior, in terms of time with the police department,  
7 member of the Gun Trace Task Force. He had been 17 years with  
8 the Gun Trace Task Force, longer even than Jenkins, who was  
9 their sergeant, and the -- you know, the defense again and  
10 again makes a -- tries to make a big deal out of the fact that  
11 he wasn't in a supervisory position.

12 It's not clear why he didn't take the sergeant's exam.  
13 We've certainly heard from lots of police officers that don't  
14 want the headache of being in a position above where he was.  
15 But he was a veteran. He was not a patrol officer. He was not  
16 a rookie. He was not new to the police department. That was  
17 some of the arguments you heard about Taylor, who was the  
18 youngest member of the unit, and none of that is true about  
19 Hersl.

20 As I said, he's also the only member of the GTTF  
21 that's brazen enough -- that's the word I keep using -- to have  
22 robbed people on his own before he even joined them.

23 And I think what's also important, in terms of  
24 understanding his history and characteristics, is he wasn't  
25 stopping. And this came out at trial, he was transferred off

1 the Gun Trace Task Force before the indictment was returned and  
2 before the defendants were charged. He had actually been  
3 transferred to Shootings.

4 And Your Honor heard testimony from Ward about a  
5 meeting where Jenkins proposed robbing Oreese Stevenson's  
6 supplier. And Oreese Stevenson had been the -- you know, the  
7 robbery that yielded the biggest haul for Jenkins and Hendrix  
8 and Taylor and Ward before they joined the  
9 Gun Trace Task Force.

10 And later Jenkins believed he had identified, further  
11 up the chain, an even bigger fish, who was Stevenson's  
12 supplier.

13 And so Jenkins called together, again, the team of  
14 people that he wanted to use and participate in this robbery,  
15 and that was Ward and Taylor and Jenkins.

16 And then Hersl -- and, again, this goes to this point  
17 about these were not legitimate law enforcement activities.  
18 He's on a different squad, he's in Shootings, but he shows up  
19 for this proposal, what was called in the trial the Twisted Tea  
20 proposal, because the testimony was that that's what they were  
21 drinking at the time, and he was ready to go. He was ready to  
22 go. And this would have gone on if these men hadn't been  
23 arrested.

24 In terms of reflecting the seriousness of the offense  
25 and promoting respect for the law, as we've said in each of



1 these sentencings, the offenses couldn't be more serious. In  
2 his case, he was found guilty of five armed robberies, one  
3 attempt, and one planned robbery, and that would result in a  
4 lengthy sentence for anyone.

5 The fact that he had a badge and a gun when he did  
6 them causes far greater harm, not the opposite, which is what  
7 he keeps arguing, because it undermines confidence in  
8 law enforcement.

9 People don't -- you know, people don't expect armed  
10 robbers not to take advantage of people, that's what they do.  
11 But this has the collateral -- strong collateral consequence of  
12 undermining public trust in the law, in the enforcement of the  
13 law in the department. It destroys the bonds between the  
14 community and the police that are essential for effective  
15 policing. It's resulted in hundreds of cases being thrown out,  
16 his conduct and the conduct of his co-defendants.

17 The most recent numbers offered to the City Council  
18 are that 1700 cases have been affected, and that's a public --  
19 a matter of public record.

20 And as we said in previous sentencings, what that  
21 means is that the guilty will walk free. We're most concerned  
22 about innocent people being in jail because of the conduct of  
23 these men.

24 And thankfully people like Herbert Tate and  
25 Antonio Santiful, where evidence was planted, they had their

1 cases thrown out long ago, so they didn't sit in jail.

2 But where we have found cases where people sat in jail  
3 because of the conduct of members of the GTTF, we've had those  
4 sentences thrown out and the convictions reversed.

5 But as bad as that is, I think the far greater number  
6 of cases will be cases where guilty people -- armed, violent  
7 offenders -- will be released because the courts and juries  
8 cannot rely on the word of Defendant Hersl or his co-defendants  
9 in any of those cases.

10 And in our system that puts such great weight on not  
11 holding the innocent responsible, those cases will have to be  
12 thrown out as well.

13 In terms of affording deterrence, I think that these,  
14 as I've said, units that operate in and around drugs will be  
15 exposed to large amounts of money or small amounts of money.  
16 In the case of Mr. Hersl, that didn't seem to bother him  
17 whether it was large or small.

18 And so there has to be accountability and there has to  
19 be a message sent that when this is found -- and it's hard to  
20 find. This was a very hard investigation and a difficult case  
21 to make, because these officers know how to evade  
22 law enforcement, 'cause they are law enforcement.

23 But when it is detected, it will be prosecuted and it  
24 will be punished.

25 At this point, Your Honor, I know Your Honor has a --

1 needs to take a break. I have a little bit more. Not a lot  
2 more, but a little bit more. And I can break, if this is the  
3 right time.

4 **THE COURT:** Sure. Yes, I think we probably should.

5 We'll take a recess until 1 o'clock. If we can all be  
6 back at 1 o'clock.

7 **MR. WISE:** Thank you, Your Honor.

8 **THE COURT:** Thank you.

9 (11:43 a.m.)

10 (Luncheon recess taken.)

11 (1:08 p.m.)

12 **THE COURT:** Good afternoon. Welcome back. You can be  
13 seated, please.

14 Okay. Mr. Wise, I think you were proceeding.

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

16 Your Honor obviously also heard from James Kostoplis,  
17 the last witness that was called in the trial. And I think the  
18 contrast between Mr. Kostoplis and Mr. Hersl couldn't have been  
19 more stark.

20 James Kostoplis was a young officer. And when faced  
21 with the choice of abusing his position and joining -- at this  
22 meeting were Hersl and Jenkins -- of joining the GTTF as  
23 Jenkins was running it, Kostoplis, clear-eyed, made the right  
24 choice. And that was a powerful piece of testimony, and I  
25 think it speaks to the fact that all of these men had choices.

1 And again and again, Defendant Hersl chose to rob people and  
2 abuse his authority.

3 The last area I wanted to address was the admonition  
4 that District Courts avoid unwarranted sentencing disparities  
5 in sentencing defendants with similar criminal histories  
6 convicted of similar conduct.

7 To date, Your Honor has obviously sentenced  
8 Sergeant Jenkins, or former-Sergeant Jenkins,  
9 former-Sergeant Allers, and Former-Detectives Hendrix, Ward,  
10 and Taylor.

11 Former-Sergeant Jenkins obviously to 25 years,  
12 Former-Sergeant Allers to 15, Hendrix and Taylor to seven --  
13 Hendrix and Ward to seven, and Taylor to 18.

14 There is obviously a yawning gap between where the  
15 defendants lie on that spectrum because of the fact that  
16 Jenkins and Allers, while they were in supervisory positions,  
17 accepted responsibility for their conduct and pled guilty, and  
18 I think their sentences reflect that crucially important  
19 distinction, a distinction with Taylor and with Hersl.

20 Hendrix and Ward not only accepted responsibility but  
21 also actively assisted the FBI in the prosecution of this case,  
22 and their cooperation was invaluable.

23 And so what we're left with is -- I think the most  
24 relevant comparison is to Taylor, who was sentenced to 18  
25 years.

1 Taylor committed the same number of robberies that  
2 we're aware of as Hersl. He was involved in -- well, Jenkins  
3 was obviously the most involved in the distribution of drugs,  
4 but you obviously heard testimony that Taylor, in the  
5 Shawn Whiting episode, took drugs that were missing. He was  
6 the one left with the drugs when they went missing.

7 And Hersl, like Taylor, you heard record evidence, was  
8 involved in the Armstrong drug robbery where Jenkins had Stepp  
9 go into the storage locker, rob the drugs, while the rest of  
10 the team, I think, you know, prepared to rob the -- they'd  
11 already robbed the van, but then to see what else was in the  
12 storage locker.

13 And you heard testimony from Stepp that Jenkins told  
14 him that he had to share the drug proceeds with Hersl because  
15 it had been Hersl's mark and that Hersl had complained that  
16 Stepp had missed about 4 ounces of cocaine when he went into  
17 the storage locker.

18 Another, I think, important aggravating factor for  
19 Hersl is the fact that, like Jenkins, he planted evidence, and  
20 that's what the testimony of Tate was, that the drugs that were  
21 reported as having been seized from Tate were not; that Tate  
22 was stopped on the street, detained, and that Hersl came  
23 empty-handed out of that alley and that Tate described this  
24 back-and-forth with the officers trying to figure out why he  
25 had been stopped, and that ultimately his case was dropped

1 because those drugs were never submitted for analysis by  
2 Detective Hersl.

3           You also heard Hersl and Taylor -- and I think this  
4 also speaks to their characteristics -- you heard them on that  
5 awful recording of the car accident that was played at trial.  
6 And among the voices you heard on that recording, theirs seemed  
7 to be the least concerned about the person who had been hit and  
8 was in need of medical attention while the GTTF hid, after  
9 having chased -- initiated a chase, in violation of the  
10 no-chase policy, and caused this accident, then hid to see if  
11 anyone showed up. And you heard and the jury heard Taylor say,  
12 "Guy's not going to say anything. He's unconscious."

13           And then you heard Hersl laugh and talk about how they  
14 could lie on their overtime records, which they'd obviously  
15 been doing for quite some time.

16           But for the first time, probably, claimed to be not --  
17 claimed to -- not claim time when they were working to cover up  
18 the fact that they had been there and that they had caused this  
19 accident. And he laughed and said -- and sort of practiced  
20 what he would say, "We weren't even there. I was driving  
21 home."

22           And that was a window, I think, into him, and it gave,  
23 I think, a very chilling sense of how he viewed himself and how  
24 he viewed the community that he was supposed to serve.

25           So our recommendation, which we've said previously, is

1 that 20 years is an appropriate sentence for Hersl.

2 He is senior to Taylor. He was involved in robberies  
3 on his own before he joined the Gun Trace Task Force, before he  
4 became -- he served under Sergeant Jenkins. A great deal of  
5 the arguments that Taylor's lawyers made were that he was under  
6 Jenkins' sway and that Jenkins was this charismatic personality  
7 and Taylor was this young, inexperienced officer. None of that  
8 can be said about Hersl. He was not young or inexperienced  
9 when he first encountered Jenkins. And he had been robbing  
10 people before, and Jenkins chose him then to participate in the  
11 robberies that they did together, I think precisely because of  
12 that.

13 **THE COURT:** Was there also, though, a robbery that  
14 Mr. -- at least one robbery that Mr. Taylor did commit before?

15 **MR. WISE:** He did with Ward, and that was the  
16 Shawn Whiting robbery. And we argued that that made him  
17 different, materially different from Hendrix and Ward -- from  
18 Hendrix in particular, who was the only member of the GTTF that  
19 started robbing people only when they affiliated with Jenkins.

20 But as I said at the beginning, one of the things that  
21 strikes me is Hersl is the only one that was comfortable enough  
22 to do this on his own around other officers.

23 That first robbery with Ward and Taylor, as you  
24 recall, Taylor said to Ward, you know, Can you get me or do you  
25 have me? And they -- I think that happened because they were

1 comfortable with each other and they were able to effectuate  
2 the robbery because they were doing it together.

3 That didn't -- you know, those kinds of concerns  
4 didn't affect Hersl. He did Tate and Santiful on back-to-back  
5 days with other officers right there.

6 You heard testimony the Jimmie Griffin scene was  
7 swarming with officers, and he went into his pockets and took  
8 his money and then went into the -- and then took the money  
9 that had been taken from the safe.

10 And so I think for all of the reasons given,  
11 particularly looking at the Taylor sentence, a sentence that is  
12 greater, not dramatically greater, but that is greater than  
13 what Taylor got is appropriate under the 3553(a) factors.

14 It is a just sentence. It's a sentence that reflects  
15 the seriousness of the offense and his characteristics as a  
16 senior officer and what he did even before he met these men.

17 And I think it reflects -- and I think it is a just  
18 sentence because it perhaps will begin to attempt to address  
19 the wrongs he did to the victims you saw in this courtroom, but  
20 also to the victims you didn't see and to the broader set of  
21 victims that this conduct affected.

22 And I think what that sentence of 20 years will say to  
23 the people that Defendant Hersl victimized is that you've heard  
24 them and that they matter.

25 **THE COURT:** Thank you, Mr. Wise.



1 Mr. Purpura.

2 **MR. PURPURA:** Your Honor, Judge Blake, if I may, I'm  
3 just going -- with the Court's permission, I'll just make a few  
4 quick remarks at this point, just to -- I believe to address  
5 some of the misstatements by Mr. Wise.

6 And then I would ask -- three of the family members  
7 are going to speak briefly, then I'll address the Court in a  
8 little more detail, if that's okay.

9 **THE COURT:** Certainly. That's fine.

10 **MR. PURPURA:** And it won't take long.

11 I just heard Mr. Wise indicate that in the  
12 Herbert Tate case that detective, then-Detective Hersl  
13 fabricated the drugs, there really were no drugs and nothing  
14 was turned in.

15 In my submission I gave to the Court, which is  
16 Defense Exhibit Number 1, it has the Evidence Control sheet on  
17 that, and it's for the Herbert Tate case, counsel, and it  
18 indicates that what was turned into Evidence Control was 15  
19 blue-and-white gelcaps and 50 blue-and-white gelcaps, and  
20 that's what Mr. Hersl put in his report that he saw in a  
21 smaller bag that Mr. Tate went to in that cut alley there, so  
22 there were drugs which were submitted.

23 **MR. WISE:** Your Honor, if I may, what I said was he  
24 didn't submit them to the lab. That's what I said.

25 **MR. PURPURA:** Well, Your Honor --

1           **MR. WISE:** And that's why the case was thrown out.

2           **THE COURT:** Right. Okay.

3           **MR. PURPURA:** Judge, I -- there's no -- there's no --  
4 all as we know is what Mr. Hersl had to do and that drugs were  
5 submitted to Evidence Control.

6           Where Mr. Wise gets this information, I don't know and  
7 I'm not sure that it's accurate.

8           **MR. WISE:** It's on record.

9           **MR. PURPURA:** I know he, as an officer -- excuse me,  
10 Mr. Wise, don't speak over me. Thank you.

11           So we have the sheet there which shows exactly what he  
12 did. And Mr. Hersl again, you know, he's admitted what he has  
13 told the Government, what he has told the Court, what I've told  
14 the jury what he did. And in Herbert Tate's case, just like in  
15 the Santiful case, he did not place a gun.

16           And Mr. Wise again suggested today, based on all the  
17 evidence we know about Santiful, about all the evidence we know  
18 what he was doing on the day he testified, suggested again  
19 that's fabricated, that at that time this detective took a gun  
20 and a small amount of drugs on Santiful for the purpose of  
21 stealing a couple hundred dollars. And that's just wrong.

22           In addition, I know that Mr. Hamilton was completely  
23 upset on the witness stand, and I know that it wasn't -- I  
24 didn't cross-examine him at that point, but it was a lot. And  
25 it probably was too much. Enough is enough, and we all know

1 that.

2 And it was over the top. I think the point was made  
3 ad nauseam as to what he was and what was going on.

4 But the representations, again, that he --  
5 Mr. Hamilton at that time, under that stress, suggested that  
6 his wife and his marriage, it's all because of what happened at  
7 his house because the detectives placed him in fear. That has  
8 to be addressed, and that's inaccurate.

9 And, again, the Government takes that as if it's  
10 gospel. If they would have looked in, just dialed into  
11 Case Search, the Government would have found that on August the  
12 2nd, 2017, a statement of probable cause and a petition for a  
13 protective order was filed against Ronald Hamilton. It was  
14 filed by his wife, Nancy Hamilton.

15 She said, on the second page of that statement -- just  
16 a portion of it, I won't read it all -- "I went upstairs in the  
17 master bedroom when he came and approached me" -- the "he"  
18 being Mr. Hamilton -- "approached me with accusations of  
19 cheating. I explained I wasn't, and he got angry and he called  
20 me a whore and a" -- something else.

21 "He said he married a freak. He jumped on top of me  
22 and held my arms behind my head and said he could kill me and  
23 no one would know." And it goes on.

24 Then again, she's not hiding at Walmart, because of  
25 Mr. Hersl or anybody else on April 29th, 2018, just recently,

1 she again files a petition for protective order and a statement  
2 of probable cause, and Mr. Hamilton was arrested again.

3 And at first he was held on no bail in Carroll County.  
4 All this is public record. And she goes on to say, "I was  
5 standing against the bed with closed fist and he said 'bitch,  
6 I'll kill you' and hit me in my temple. I started crying and  
7 he said 'F this' and went to grab the TV and throw it at me."

8 She went on. She then says, "I ran into the woods.  
9 He said, 'You scared, bitch? All you're going to do is call  
10 the police there and they're not going to do anything.'"

11 And she goes on about further actions.

12 So I guess the point is that you just can't take  
13 everything at face value.

14 And with that -- and there's no question that  
15 Mr. Hersl is guilty of very serious crimes. He stands before  
16 this court guilty of those crimes today. He's accepted, maybe  
17 not as the Government wants, complete responsibility. He  
18 didn't enter a guilty plea. He went to trial. But he never  
19 denied full responsibility. He may differ exactly as to what  
20 the Government's suggesting he did, and I believe there's a  
21 good basis for that. But -- so he's here today.

22 And with that, just to show a slight picture of his  
23 background, the person the Court's going to sentence, I know  
24 that the family members -- perhaps even more so for their sake,  
25 I would like to have the sisters briefly speak.

1           **THE COURT:** Sure. I'd be happy to hear from them. I  
2 did read a number of letters as well.

3           But, yes, if they would come up to the podium and  
4 speak into the microphone.

5           **JANE SHOTT:** Good afternoon, Your Honor.

6           **THE CLERK:** Ma'am, please state your name for the  
7 record.

8           **JANE SHOTT:** My name is Jane Shott.

9           **THE CLERK:** Spell your last name.

10          **JANE SHOTT:** S-H-O-T-T. And I am Daniel Hersl's  
11 sister.

12          Daniel Hersl, who I refer to as Danny, is the youngest  
13 of six siblings. He was born, raised, and educated in  
14 Baltimore City.

15          Our father died when Danny was just 7 years old.

16          Our mother, she handed her values down to Danny. Our  
17 mother is like no other woman. She epitomizes strength,  
18 courage, love, and kindness, and she loves people  
19 unconditionally.

20          Danny is a warmhearted person. He truly cares for the  
21 well-being of people. He checks on his mother several times a  
22 week, brings her hot meals, dessert, coffee. She always enjoys  
23 that.

24          In the past he has helped people get jobs. He speaks  
25 to addicts about their addictions. He encourages them to get

1 help. He speaks to them about changing their life, turning  
2 their life around, trying to make a better life for themselves.

3 He speaks to young people about the dangers of drugs  
4 and the effects of drugs and guns.

5 Danny knows firsthand the danger of drugs. In 2013,  
6 his brother, Matt, was killed. He was -- he walked out of his  
7 building where he works. He was crossing the street. As he  
8 crossed the street, he was hit by a vehicle that was out of  
9 control going 110 miles an hour.

10 Danny not only lost a brother that day, he lost his  
11 best friend.

12 Most importantly, he is a great father of his son of  
13 10 years old. He calls his son his best bud. Danny emphasizes  
14 the importance of school and good grades.

15 Him and his son enjoy many activities, including  
16 soccer, baseball, basketball. They love and miss each other  
17 tremendously.

18 Danny has earned a reputation of being a good father,  
19 a good brother, a good son, a good uncle, and a good friend,  
20 and he feels deep remorse.

21 We love Danny and we miss him very, very much, and we  
22 can't wait to have him back with us.

23 Your Honor, with all due respect, before you decide on  
24 a sentence for Danny, I ask you to consider his remorse and his  
25 positive contributions to society.

1 Thank you.

2 **THE COURT:** Thank you. Thank you very much.

3 **MR. PURPURA:** Just if I may, Your Honor, Jerome Hersl  
4 wanted to speak briefly.

5 **THE COURT:** Of course.

6 **THE CLERK:** Sir, please state your name for the  
7 record. Sir, please state your name for the record.

8 **JEROME HERSL:** My name is Jerome Hersl.

9 **THE COURT:** Thank you.

10 **JEROME HERSL:** Good afternoon, Your Honor. I am the  
11 oldest brother of Danny Hersl.

12 Your Honor, I'd like to convey to you today a  
13 different Danny Hersl than what we've heard about in this  
14 court.

15 It has taken our family by surprise, all the  
16 allegations and the trial. And, like my sister said, I'm sure  
17 Danny feels great remorse.

18 But what I'd like to say is Danny Hersl led a life as  
19 a policeman saving lives, and he saved many lives. And I just  
20 want to give you a couple examples.

21 One example is Danny was patrolling Harford Road with  
22 his partner, Michael Rice, and another partner,  
23 Officer Latosha Tinsley, or she's known as Tink.

24 Going down Harford Road, they approach a man with a  
25 long leather coat, and he was -- they stopped to investigate.

1 They thought he was carrying lots of guns.

2 So Dan's in the driver's seat. He's right here  
3 (indicating). Michael Rice is next to him. And I'm getting  
4 this story from Michael Rice and also a police officer who  
5 investigated the car after this situation.

6 Tink is in the backseat behind Michael Rice.

7 Michael Rice gets out of the car. He's in the seated  
8 position, and as he gets up, he's going for his gun. And as he  
9 faces the man with the long leather coat on a bicycle, the man  
10 raises from his coat and shoots at Michael Rice (indicating)  
11 and begins to spray the vehicle with bullets, just missing the  
12 top of Tink's head.

13 Now, Danny's characters are in the details of what  
14 happens next. Mike Rice, he gets hit in the -- kind of the  
15 shoulder/neck area (indicating). If it misses Michael Rice, it  
16 hits Danny in the head. Okay.

17 But Danny -- normally a person would bail out of the  
18 car, go for cover to protect themselves, try to get to the --  
19 maybe the fender/engine area in order to protect themselves and  
20 fire back.

21 Not Danny. Danny, at his own risk to his life, was  
22 out of that car, up over the hood, and before the gunman could  
23 spray back and kill Michael Rice or Tink and/or Danny, Danny  
24 returns fire. Okay. He didn't go for cover. He's going to  
25 protect his other officers.



1           And then he pursues the gunman down the street, away  
2 from Michael Rice, in order for Tink to go to Michael and help  
3 him out.

4           In order to make this story short, Danny ends the gun  
5 battle with his 14th bullet. He's only got 14 bullets. He  
6 shoots, and he doesn't know if the gunman is hurt, injured,  
7 whatever. He thinks he's alive. And now he has to wait for  
8 the backup. It was probably only a minute, but it must have  
9 been the longest minute. His life was threatened. It didn't  
10 matter. He saved two lives.

11           Another situation is on Aikens and Robb Street. We  
12 heard about that open-air drug market in this case. Danny  
13 patrolled that area for a good two or three years.

14           During those three years, there were no homicides in  
15 that area. When Danny was incarcerated, there was almost a  
16 homicide a month.

17           In December of 2017, the homicides reached seven, and  
18 they're growing now. I don't know what they are right now, but  
19 they're growing.

20           Danny, he when he was on the street -- street, he was  
21 efficient. He saved lives of seven just in that one open-air  
22 drug market. Two cops and the Harford Road situation.

23           The other situation was -- I beg your pardon. I  
24 got -- was the Black Guerilla Family. We all know about the  
25 Black Guerilla Family and the early morning raids in

1 East Baltimore. And it was a multitask jurisdiction raid that  
2 essentially took a couple -- couple groups of police officers  
3 to go into the houses.

4 Now, Danny, he was in a group, okay, but he wasn't in  
5 the back of the group. He was the one that went through the  
6 door first. Okay. At great risk to himself. And this was  
7 typical of Danny.

8 The last thing is the gun -- the Gun Trace Task Force.  
9 We've heard in this court a lot of the evils about the  
10 Gun Trace Task Force, but we haven't heard the good things.  
11 And the good thing is they got a thousand illegal guns off the  
12 street in Baltimore City. That is a tremendous amount of guns.

13 Now, I don't speak to Danny that often about his work,  
14 but I live in Bel Air. And I'm at the Pep Boys with my wife  
15 and a guy taps me on the shoulder because he heard my name. He  
16 says, Do you know Dan Hersl?

17 And I told him I was his brother.

18 He said you should be proud of Dan Hersl. This was  
19 November of 2016. He says, Do you know how many guns Dan got  
20 off the street in Baltimore? Dan got hundreds and hundreds and  
21 more of guns off the street. So many guns that he forgot -- he  
22 stopped counting. Okay.

23 And guns, illegal guns on the street cause homicides,  
24 deaths. And getting hundreds and hundreds of guns off the  
25 street saves lives.

1           The Gun Trace Task Force, in 2015, the homicide rate  
2 increased by over 130 in that year.

3           The Gun Trace Task Force in 2016 was able to reverse  
4 that and reduce the homicides by 24, and they most likely  
5 contributed to the incline in 2017. They stopped that incline.  
6 So gettin' all those guns off the street saves lives.

7           Bottom line is that was the Dan Hersl that we know of,  
8 and he was a -- he contributed greatly to Baltimore City.

9           And based on that, I'd just like, Your Honor, to say,  
10 my goodness, this guy saved a lot of lives, and that's got to  
11 count for something.

12           Now, I'm just asking you to think about that when you  
13 consider his sentence, and I hope you can mitigate that  
14 sentence accordingly.

15           Thank you.

16           **THE COURT:** Thank you, sir.

17           **MR. PURPURA:** Thank you, Jerome.

18           Your Honor, just -- Exhibit Number 2, which I  
19 submitted to the Court in my letter is the Medal of Honor which  
20 Daniel Hersl received on September 28th, 2011, and that was for  
21 the shooting that his brother Jerome just spoke about involving  
22 his fellow police officers.

23           Your Honor, the last brief witness we'll call is  
24 Stephen Hersl.

25           **THE CLERK:** Sir, please state your name for the

1 record, and if you could spell your first name.

2           **STEPHEN HERSL:** First name is Stephen, S-T-E-P-H-E-N;  
3 last name is Hersl, H-E-R-S-L.

4           Good afternoon, Your Honor.

5           **THE COURT:** Good afternoon.

6           **STEPHEN HERSL:** And thank you for your time.

7           **THE COURT:** Sure.

8           **STEPHEN HERSL:** I had this remembered, but I'm quite  
9 shaken, and I brought this just in case.

10          **THE COURT:** That's fine.

11          **STEPHEN HERSL:** My name's Stephen Hersl, brother of  
12 Daniel Hersl. I was a Baltimore City firefighter who had to be  
13 retired after 20 years of service due to my heart condition and  
14 many heart operations.

15                 My mother, Dorothy Hersl -- God bless her, an angel --  
16 worked for Baltimore City for 30 years.

17                 My brother, Matthew Hersl, who is in heaven right now,  
18 an outstanding human being, was tragically hit and killed  
19 walking out of work in front of City Hall by a driver who was  
20 under the influence of drugs. Matthew dedicated his life to  
21 Baltimore City for 27 years.

22                 My youngest brother, Daniel Hersl, whom I love and  
23 miss tremendously, risked his life for 18 years working for the  
24 Baltimore City Police Department, Your Honor.

25                 The Hersl family has invested 95 years into the

1 Baltimore City community, and that's not including my lovely  
2 sister, Jane Hersl, and her husband, who own a plumbing company  
3 in Baltimore City for 35 years. And my older brother, Charles,  
4 who is a carpenter and has done the majority of his work in  
5 Baltimore City for over 35 years.

6 In closing, Your Honor, I ask for leniency for my  
7 brother Daniel Hersl and his 10-year-old son.

8 Please consider Daniel's life as a whole, as he is a  
9 very good man.

10 And I thank you, Your Honor.

11 **THE COURT:** Thank you. Thank you, Mr. Hersl.

12 **MR. PURPURA:** Your Honor, thank you for hearing from  
13 the family members. I know it's difficult, and I appreciate  
14 that.

15 **THE COURT:** Of course.

16 **MR. PURPURA:** Your Honor, I'll be brief in my remarks.

17 Again, I think that I've given everything that I can  
18 give to the Court for sentencing purposes in the sentencing  
19 memorandum that I gave to the Court, as well as the letters, as  
20 well as the photographs, as well as the family letters and the  
21 friends' letters. It was a rather large package.

22 I would like just to note and just to highlight some  
23 things at this point and tell the Court that recently, you  
24 know, the opportunity to go to Everyman Theater and there was  
25 this wonderful play. And the play involved a family's history

1 through letters.

2           And then when I read Ms. Simms' [sic] presentence  
3 report and I saw she was actually given letters from the family  
4 that Dan Hersl wrote, I said, well, I should look at these as  
5 well to see what this is, and it seems like letter writing is a  
6 lost art.

7           But in these letters -- and I sent those out to the  
8 Court in chronological order -- I believe it shows the true  
9 character of Dan Hersl; his faith; the punishment that he is  
10 receiving and expects to receive; his fears; his efforts at  
11 rehabilitation; and above all, his capacity to love.

12           The first letter that I've noted in the excerpt was  
13 May 18th, 2017, "Hi, everyone. I miss and love every one of  
14 you so much. My days here go slow with not much to do. I lost  
15 30 pounds in the first two-plus months of being arrested. I  
16 still struggle with my anxiety" -- all in capitals --  
17 "especially first thing in the morning and late at night.

18           "Mom, I think of you and my son every minute of the  
19 day. Since I'm a federal prisoner, I cannot get a job or  
20 pretty much do anything but walk around the cell block in  
21 circles all day. I still pray numerous times a day and ask  
22 Matt to hear my prayers and bring them to the Lord's attention.

23           "My mind wanders so much. I am so tired of being  
24 scared for my safety and fate."

25           July 9th, 2017 -- these are short excerpts, "I want to

1 start by saying I love you all so much. Please continue to  
2 pray for me. Please. I'm so scared and mentally drained.

3 "Mom, I love you. I don't know what else to say or  
4 write. I'm sorry this letter is so short. I love you all. I  
5 am so" -- triple Os -- "so lost. Love always. Danny."

6 July 10th, 2017, "Hi, everyone. I seen the mental  
7 health doctor today, and he started me on medication called  
8 Zoloft, 25 milligrams. I love you all. One day we will be  
9 together again.

10 "I leave you with this: Most times when you argue or  
11 do something wrong to someone, we tend on just forgetting about  
12 it and moving on. We should forgive instead. Love always.  
13 Danny."

14 September 1st, 2017, "Hi, everyone. Well, it's been  
15 six months that I've been incarcerated. To me, it feels like  
16 it's been at least two years. I really miss everyone so much  
17 and think about everyone often. I miss my little boy and write  
18 and draw him pictures every day. Love always. Danny."

19 September, undated, 2017, "Hi, everyone. Well, I  
20 guess this is the last letter I'll be sending to you from this  
21 facility. If you've not heard yet, a few inmates found out who  
22 I am and threatened me and hatched a plan to jump me. Luckily,  
23 I observed them doing this and trying to come after me with two  
24 long white shoelaces which I guess were planned to strangle me  
25 or choke me out.

1 "So I guess I am off to my fourth different jail in  
2 eight months. I don't know where they're going to take me from  
3 here, but my anxiety is really climbing, not knowing what the  
4 future holds for me.

5 "I am very scared and worried. They have me on  
6 lockdown, so I only get out of my cell to take a shower and  
7 make a phone call. I don't even have a bunk, so I have to lie  
8 my mattress pad on the concrete.

9 "Mom, I love and miss you. I love and miss you all.  
10 Love always. Danny."

11 September 16th, 2017, "Hi, family. Well, I guess you  
12 know by now my spirits are pretty low. I am truly a good  
13 person who tries to help people and would never hurt anyone.  
14 And have to sit here and wonder if I will ever get to be home  
15 with my son and my family ever again.

16 "I love you and I'm so sorry for putting you through  
17 this mess. Love always. Danny."

18 October 13th, 2017, "Hello, everyone. I hope everyone  
19 is doing well. I am still by myself in protective custody. It  
20 gets lonely, but it does have its advantages: Safety, peace  
21 and quiet. Goodnight. I love and miss you all. Love always.  
22 Danny."

23 November 2nd, 2017, "Hi, everyone. I want to  
24 apologize for not writing or calling much lately, but sometimes  
25 I just don't feel like talking. I guess being in protective



1 custody and not speaking very often on a daily basis, I get  
2 down at times.

3 "I finally got to go outside yesterday for the first  
4 time in over two months. I have to admit that I actually had  
5 tears in my eyes as I walked around the yard for the whole hour  
6 I was allowed to stay out. Please be safe and happy. Love  
7 always. Danny."

8 December 19th, 2017, "Hello, everyone. I hope you  
9 received this letter by Christmas. I want to thank all of you  
10 for your never-ending love and support for me. I truly don't  
11 know where I would be without you. I hope all of you enjoy  
12 your Christmas and New Year's with those you love most.

13 "Please continue to pray for me. Ask God on this  
14 special day to continue to show his love for me and to help me  
15 get home to my family and friends. I don't know what's going  
16 to happen to me, where life is going to take me. I'm very,  
17 very scared.

18 "Thank you for looking out for my son. Please keep  
19 praying for me. Love always. Danny."

20 The last excerpt is after his trial.

21 March 5th, 2018, "Hello, everyone. I want to thank  
22 everyone that came to court and showed support for me. Trust  
23 me, I will never forget you being there, even though the  
24 outcome was not in my favor.

25 "I can't wait until the judge sentences me so I can at

1 least get out of Maryland, and maybe that way I don't have to  
2 continue to worry about my safety and I can hopefully get my  
3 mind right. Please look after my son and always keep him on  
4 your mind.

5 "Mom, I love you and thank you for always doing  
6 whatever you could for me throughout the years.

7 "I think it's time for all of you to get on with your  
8 lives and enjoy and cherish what life has to offer you. Love  
9 always. Danny."

10 And, finally, I supplied the Court with a series of  
11 letters to his son. Not all of them. He literally was writing  
12 his son almost on a daily basis, but just one excerpt from  
13 one -- from one letter.

14 July 2nd, 2017 -- and as I noted in my letter to the  
15 Court that Dan Hersl has phone contact with his son and letter  
16 contact with his son, but he won't allow his son -- discourages  
17 any visits because he doesn't want his son to be indoctrinated  
18 to a prison and to see his father behind bars. Unlike so many  
19 times we see parents bringing children to the court as pawns.

20 Letter to his son July 2nd, 2017, "Hi, little boy. I  
21 hope you're doing well and being a good boy for Mommy. I also  
22 hope your summer vacation is going good. I bet you like  
23 sleeping in and going to bed late.

24 "Hopefully you will do some fishing soon and maybe  
25 catch a big fish. Maybe you and Mom will go out to Aunt Jane's

1 and go swimming one day. Nanny and Aunt Jane would really like  
2 that.

3 "I want to congratulate you on making the honor roll.  
4 You are a very smart boy and you make me so happy and proud.

5 "I love and miss you and Mommy so much. Well,  
6 goodnight for now. I will continue to write and maybe you can  
7 write me some. I love you. Talk to you soon. Love. Danny."

8 And then he puts down a P.S., "Is your computer  
9 running?" And he goes on to say, "If so, you better catch it.  
10 I hope you like my drawings."

11 And I've given the Court the drawings. And I know in  
12 speaking to Danny and to his sister that he's asked his sister  
13 to get him a coloring book, a drawing book so he can improve in  
14 his drawings. You can actually see in the drawings submitted  
15 that he does improve in the drawings.

16 So we've heard and he's earned the terrible things  
17 that the Government has said, but there is another side, and  
18 that side I'm asking the Court to consider takes him out of  
19 this guideline range which is so, so high in this particular  
20 case.

21 There is an acceptance. It may not be what acceptance  
22 is under the guidelines, but it is an acceptance the Court can  
23 and hopefully should take into consideration under 3553.

24 You can take into consideration his actions compared  
25 to the others.

1           You heard about the large-scale robberies involving  
2 Hendrix and Ward and Taylor.

3           Hendrix and Ward did not go to trial. They did  
4 cooperate. There's no question that people who cooperate  
5 deserve credit for their cooperation. They received the  
6 sentences, as Mr. Wise indicated, of seven years.

7           Mr. Hersl, unlike any of the others, the only  
8 allegations involving this implication of drugs came from Stepp  
9 on the witness stand. Other than that, there was nothing else,  
10 unlike the others.

11           You can take into consideration all those actions I  
12 mentioned and his particular actions, how they really are  
13 not -- they're all egregious, but for sentencing purposes they  
14 really don't compare to the same magnitude of many of the  
15 others, including fabricating the evidence with the video,  
16 which we saw.

17           You can take into consideration, as I put in the memo,  
18 susceptibility to corruption, that he was on the force for  
19 years, that we can generally see, and we do see, that it can  
20 wear you down as a Baltimore City police officer and there's  
21 frustration and there has been frustration, and the frustration  
22 really manifests itself after the 2015 riots.

23           You can and should take into consideration  
24 susceptibility based on his education, how, in my opinion,  
25 respectfully to Mr. Hersl, is extremely limited. The way the

1 family tragedy affected him and the effects of alcohol.

2 And you can take into consideration his time in  
3 protective custody, the time he spent. I know that's been  
4 argued before, but you see it here. You see the actual effect  
5 it has on a person, what he -- what he has. He drinks fresh  
6 water only when he comes here to court.

7 You can take into consideration the future. There is  
8 no place in the BOP for police officers, no particular place  
9 for police officers.

10 You can and should take into consideration his age.  
11 He's almost 49 years old. The chance of recidivism is just nil  
12 in this particular case, especially since the avenue to these  
13 events, these robberies, was as a police officer, which he'll  
14 never be again.

15 You can and you should take into effect the  
16 post-offense rehabilitation, such as in Koons. You can see it  
17 in the character of his letters. You can see it in his  
18 attempts in the facilities to get alcohol and/or drug  
19 treatment. You can see it in the letters to his family.

20 And you can take into effect the strong bond he has  
21 with a 10-year-old child. And Mr. Hersl should be punished,  
22 but the punishment also goes collaterally to the child,  
23 unfortunately.

24 So all of these factors, all of these 3553 factors,  
25 can and should be taken into consideration when you sentence

1 Mr. Hersl.

2 And we did try this case, and so this Court saw his  
3 conduct and this Court can compare his conduct to other people.  
4 You don't need Mr. Wise to tell you what his conduct is and you  
5 certainly don't need me to tell you what his conduct is.

6 And I can tell the Court that whatever the sentence  
7 the Court imposes, as I said before the trial started, I know  
8 it will be a just and well-reasoned sentence.

9 I know Mr. Hersl has a right of allocution. He's --  
10 we've spoken of that often.

11 Danny, just stand up with me for a second.

12 He's indicated to me that the letters we've submitted  
13 in his behalf, what I've said and what his family said, he all  
14 knew what we are going to say, is sufficient, and there's  
15 really nothing else that he wishes to add at this time.

16 Is that correct, Mr. Hersl?

17 **THE DEFENDANT:** Correct, Your Honor.

18 **MR. PURPURA:** Thank you, Danny.

19 Thank you very much, Your Honor.

20 **THE COURT:** All right. Thank you. I appreciate it,  
21 Mr. Purpura.

22 Let me just also ask specifically -- and you've  
23 alluded to it a little bit -- there will be a period of  
24 supervised release. It seems to me that alcohol abuse --

25 **MR. PURPURA:** Yes.

1           **THE COURT:** -- mental health.

2           Is there anything specific by way of recommendation to  
3 the Bureau of Prisons that you would be looking for? I think  
4 designation of the facility is complex because of his prior  
5 employment, but --

6           **MR. PURPURA:** Actually, obviously, I hope -- and I  
7 spoke to the BOP, and hopefully they can do what's appropriate.  
8 I spoke to Mr. Hersl, and at first his thought would be that he  
9 wanted to be outside of the jurisdiction for safety purposes,  
10 but now I think he's changed that.

11           I'm going to ask the Court to recommend FCC at  
12 Fairton, New Jersey. But whatever the -- I'm sure whatever the  
13 BOP feels is appropriate in this particular case, they'll do.

14           **THE COURT:** Okay. All right. Thank you.

15           Anything else --

16           **MR. PURPURA:** Nothing. Thank you.

17           **THE COURT:** -- that anybody wants to be heard on?

18                           Conference at the bench.

19           (It is the policy of this court that every guilty plea and  
20 sentencing proceeding include a bench conference concerning  
21 whether the defendant is or is not cooperating.)

22           **THE COURT:** Okay. All right. As you've all heard me  
23 say before, and it doesn't change, sentencing is a very  
24 difficult process. There are many things that have to be  
25 considered in this case.

1 I'll start with the nature and circumstances of the  
2 offense and what are the harms caused by the conduct that the  
3 jury did find had been proved as to Mr. Hersl.

4 And, of course, there are harms to the individual  
5 victims whose money was taken. There was undoubtedly a  
6 wrongful use of official force. The gun and the badge enabled  
7 taking money, which, again, according to the jury's verdict,  
8 and I think the law, was a robbery; but whether it's robbery or  
9 theft, this was accomplished by the wrongful use of Mr. Hersl's  
10 police authority.

11 It is an abuse of the public trust. Officers take an  
12 oath to uphold the law. That gives them the right to have that  
13 gun and that badge so they can enforce the law, not break it.

14 And the harm that's done to what's already a level of  
15 distrust between many in our community and the police is only  
16 deepened by these kinds of proven crimes.

17 As has been referenced, the conduct of Mr. Hersl and  
18 others has resulted, it would appear, in the dismissal of  
19 probably hundreds -- or will result in the dismissal of  
20 probably hundreds of other criminal cases, some perhaps  
21 involving people wrongly convicted, some people who had, in  
22 fact, committed crimes, but those must be dismissed because the  
23 credibility of the officers on which the convictions rested has  
24 been destroyed.

25 The overtime fraud obviously took money from a city



1 that doesn't have any money to spare. And this overall conduct  
2 has, as I've said before, made more difficult the job of the  
3 majority of the men and women in uniform here in the city who  
4 face danger and hardship every day trying to protect the  
5 public, and they do that now in the face of this increased lack  
6 of trust.

7 And as I've said before, it strikes at the foundation  
8 of our entire criminal justice system if judges and juries  
9 can't rely on the word of sworn law enforcement officers  
10 because they're covering up their own crimes, whatever those  
11 crimes may be. Now, so we have very, very serious offenses  
12 here.

13 Obviously, I also need to consider the history and  
14 characteristics of Mr. Hersl. He's been a police officer for a  
15 long time. I don't doubt -- and as his brothers and others  
16 have said -- that he has put himself in harm's way in the  
17 course of that employment, that he has, in fact, protected  
18 others, saved lives, been involved in very stressful and  
19 disturbing situations.

20 I'm sure that he has been and continues to be,  
21 obviously, very loyal to his family, to his friends. I'm sure  
22 he's done good things for his community and appreciates the  
23 letters of support that have been offered for him and the  
24 people that are here for him today, and many of whom were  
25 present during the trial, of course. And I do take that all

1 into account, as I did with others.

2 The letters that have been presented, and in  
3 particular Mr. Hersl's letters, certainly show his pain, his  
4 faith, his love of family, and that he is -- obviously already  
5 has been and is being punished again. As is true for the other  
6 defendants in this case, it's reasonable to think that serving  
7 time in the Bureau of Prisons is -- it's difficult for anyone.  
8 It may be of particular difficulty for a former police officer.

9 On the other hand, to reflect the seriousness of the  
10 offense and promote respect for the law and provide just  
11 punishment, I again say there must be a significant period of  
12 incarceration.

13 I don't think there's an issue of specific deterrence  
14 or recidivism as to Mr. Hersl.

15 But this is clearly one of the cases in my career as a  
16 judge where the factor of general deterrence has great  
17 importance. There must be a clear message that officers who  
18 break their oaths by robbery, by fraud, by other crimes will be  
19 prosecuted and will be justly punished for that conduct.

20 Finally, there is the factor of relative culpability.  
21 Mr. Hersl was not a supervisor, was not a sergeant like two of  
22 the others that I have sentenced. He was a fairly senior  
23 member of the police force, but not a supervisor.

24 He apparently has committed a relatively similar  
25 number of robberies with Mr. Taylor.

1           There is some indication, there was some indication of  
2 drug involvement as to both Mr. Hersl and Mr. Taylor, but,  
3 frankly, nothing like the scale or the proof that was offered  
4 in regard to Sergeant Jenkins, who received the highest  
5 sentence in this case.

6           I balance -- yes, he was a more senior member than  
7 Mr. Taylor. I do note that to some degree, not in a guideline  
8 sense, I do believe there has been some acceptance of  
9 responsibility by Mr. Hersl.

10           And when I consider all those factors, I find that the  
11 sentence that was imposed on Former-Officer Taylor is the same  
12 sentence that is fair, reasonable, and just for Mr. Hersl, that  
13 is 18 years. That is 216 months in the custody of the Bureau  
14 of Prisons.

15           That is -- I will state that, and you'll tell me if  
16 there's any lawful legal objection to anything that I'm saying,  
17 but I believe it should be 18 years on Counts 1 and 2 and 5,  
18 concurrent, of course, with credit for time served.

19           That there would be a period of three years of  
20 supervised release, concurrent on each count to follow, with  
21 special conditions of participating in any alcohol abuse  
22 treatment program the probation officer recommends and any  
23 mental health counseling or treatment the probation officer  
24 recommends and providing financial information to the  
25 Probation Office.

1 In that regard, I'll just note briefly, again, we  
2 didn't discuss restitution, but is that the same --

3 **MR. WISE:** We're preparing a global restitution order  
4 which we'll be submitting -- circulate to counsel and be  
5 submitting after this sentencing and before the other -- I  
6 think the remaining sentencings.

7 **THE COURT:** The restitution will be deferred.

8 His financial circumstances don't permit a fine.

9 There is a required \$100 special assessment on each  
10 count. That's a total of \$300 that I will impose.

11 I'll certainly make the recommendation to the Bureau  
12 of Prisons that they consider a designation to FCI Fairton so  
13 he can be close to his family. That's, again, up to the Bureau  
14 of Prisons. And there are a lot of security issues to  
15 consider.

16 And have I left anything out? Anything I have not  
17 addressed? Any legal objection to that sentence or not  
18 covered?

19 **MR. WISE:** Not from the United States, Your Honor.

20 **MR. PURPURA:** Your Honor, I might have missed it,  
21 supervised release?

22 **MR. WISE:** Three years.

23 **MR. PURPURA:** Oh, she said that? Okay.

24 **THE COURT:** I'm sorry?

25 **MR. PURPURA:** I didn't -- I missed it. You mentioned

1 it, supervised release. There's nothing further.

2 **THE COURT:** Sure. Yes. Three years concurrent.

3 I have a note from our courtroom deputy. Counts 1 and  
4 2 of the original indictment?

5 **MR. WISE:** There was an original indictment. I don't  
6 recall if we dismiss after trial. I don't think we do in case  
7 there's an issue on appeal.

8 **THE COURT:** Because of the appeal?

9 **MR. WISE:** Right.

10 **THE COURT:** Okay. All right.

11 Mr. Hersl, obviously, as I'm sure you're aware, you do  
12 have a right to appeal, both from the result of the trial, the  
13 convictions, and from this sentence. You will consult with  
14 Mr. Purpura about that.

15 But any appeal would need to be noted within 14 days.

16 Do you understand that, sir?

17 **THE DEFENDANT:** Yes, Your Honor, I understand.

18 **MR. PURPURA:** Your Honor, just on that issue, the  
19 Court, based on a filing by Mr. Hersl, had found that Mr. Hersl  
20 presently does not have funds for counsel. And would that hold  
21 for the appeal? Because --

22 **THE COURT:** That, I believe, will be up to the  
23 Fourth Circuit.

24 **MR. PURPURA:** Fourth Circuit.

25 **THE COURT:** But if you note the appeal, it is up to

1 the Fourth Circuit as to that appointment issue.

2 **MR. PURPURA:** Will do. Thank you.

3 **THE COURT:** It would seem reasonable to me, but it's  
4 up to the Fourth Circuit --

5 **MR. PURPURA:** Thank you, Your Honor.

6 **THE COURT:** -- as I understand it.

7 Okay. Thank you, all.

8 **MR. WISE:** Thank you, Your Honor.

9 (Court adjourned at 2:05 p.m.)

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

13 \_\_\_\_\_  
14 /s/

15 Douglas J. Zweizig, RDR, CRR  
16 Registered Diplomate Reporter  
17 Certified Realtime Reporter  
18 Federal Official Court Reporter  
19 DATE: August 17, 2018  
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