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                    IN THE UNITED STATES DISTRICT COURT
                       FOR THE DISTRICT OF MARYLAND
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                            NORTHERN DIVISION
     UNITED STATES OF AMERICA,
 3
          Plaintiff,
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                                    CRIMINAL CASE NO. CCB-17-106
          vs.
 5
     DANIEL THOMAS HERSL and
 6
     MARCUS ROOSEVELT TAYLOR,
          Defendants.
 7
 8
                        Wednesday, February 7, 2018
 9
                             Courtroom 1A
                          Baltimore, Maryland
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11
                      THE HONORABLE CATHERINE C. BLAKE, JUDGE
             BEFORE:
                       (AND A JURY)
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13
                                 VOLUME IX
14
15
16
17
     For the Plaintiff:
18
     Leo J. Wise, Esquire
     Derek E. Hines, Esquire
19
     Assistant United States Attorneys
20
21
22
                                Reported by:
23
                       Douglas J. Zweizig, RDR, CRR
                      Federal Official Court Reporter
24
                     101 W. Lombard Street, 4th Floor
                        Baltimore, Maryland 21201
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     For the Defendant Daniel Hersl:
 2
     William B. Purpura, Jr., Esquire
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     For the Defendant Marcus Taylor:
 4
     Christopher C. Nieto, Esquire
     Jenifer Wicks, Esquire
 5
 6
 7
     Also Present:
     Special Agent Erika Jensen, FBI
 8
     TFO John Sieracki
 9
10
     Matthew Kerrigan, Government's Trial Technician
11
     Crystal Panas, Defense Paralegal
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1 PROCEEDINGS 2 (11:12 a.m.) Good morning, everyone. Be seated, THE COURT: 3 4 please. 5 Any issues before the jury comes in? MR. PURPURA: If we could just briefly approach on the 6 7 issue of jury questions. THE COURT: Sure. 8 (Bench conference on the record: 9 MR. PURPURA: Good morning, Your Honor. 10 11 THE COURT: Good morning. MR. PURPURA: Very briefly, I could not -- I did a 12 13 little bit of research. I couldn't find anything where the theft would or would not be an instruction in this particular 14 15 case, so I couldn't find anything either way. 16 I still believe that the -- since theft has been such 17 an issue in this particular case, the jury should know what the definition of "theft" is. 18 19 I would -- if the Court does not give it in the body 20 of the instruction, I'd ask the Court to tell the jury in the 21 beginning that the defense theory of this case has been from the beginning that Defendant Hersl committed a theft. A theft 22 23 as defined in Maryland law is as I've defined it in the instruction. 24 25 I'm entitled to a theory of defense instruction.

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That theory of defense applies to a piece
 1
              THE COURT:
 2
     of this. It applies to the Maryland robbery, which is one of
     the kinds of racketeering acts. I think -- I mean, as you've
 3
     just proposed it to me, it's a bit broad.
 4
 5
              MR. PURPURA: And I believe it also applies to the
     federal Hobbs Act robbery. I believe it applies to extortion
 6
     under color -- not -- under extortion through violence as well.
 7
              THE COURT: I am not at all sure that the Maryland
 8
     elements of theft would apply to Hobbs Act robbery or
 9
10
     extortion.
11
              MR. PURPURA: No.
                                 The point -- it would be a defense
     to Hobbs Act robbery/extortion by violence if it's a theft and
12
    not a Hobbs Act robbery by violence or extortion by violence,
13
     and that's our theory of defense.
14
              THE COURT: I understand that. But maybe I'm not
15
16
     making myself clear. I don't think that the elements of
    Maryland theft would necessarily have any applicability to
17
18
     Hobbs Act robbery or extortion.
              I understood your point about it being lesser-included
19
20
     on the Maryland robbery, but I don't think it's a
21
     lesser-included or anything as to Hobbs Act.
22
              MR. PURPURA: He'd be found not guilty. There's no
     lesser-included.
23
24
              THE COURT:
                          Right.
              MR. PURPURA: Maybe I'm being obtuse, and I apologize
25
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for that.

I still believe under the theory of defense, that that is our theory of defense. And I believe that the request I'm making is appropriate, as general as it is.

THE COURT: Okay. Government?

MR. WISE: Your Honor, the theory of defense is the elements of the charged offense haven't been made. Counsel can argue that. Theft does not feature prominently in this case at all. Counsel mentioned it in opening. And it, frankly, has not been heard since then.

He can certainly argue that these -- I'm not sure even how he argues this, but that these should be characterized as thefts.

But in terms of the law at issue in this case, again, as we said yesterday, the charges and then any applicable affirmative defenses that the law recognize are the instructions the jury receives. Whatever arguments Mr. Purpura wants to make about why the elements aren't met, he's free to make.

But it's not appropriate to instruct the jury on uncharged state law offenses in support of his argument. And I was reminded -- I was thinking about this last night. I tried a case in front of Judge Garbis where bribery was charged at the city landfill, that someone was bribing the contractors there to give them copper.

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And the defense was: This is just a state law theft.
 1
     It's not a bribery case. It's been overcharged. Judge Garbis
 2
     in that case did not give a theft instruction. Defense counsel
 3
     just argued it in opening and closing.
 4
 5
              And it was United States versus Washington.
                                                           It was
     tried in the fall of -- November '16.
 6
 7
                         Right. Okay. I appreciate your argument.
              THE COURT:
     I'm going to overrule it. I think that you're free to argue
 8
     your theory of defense by arquing that the Government has not
 9
10
     met the elements that would turn it -- that would make it a
11
     robbery. You're certainly free to say: Took it; he kept it,
     but he didn't do it by wrongful use of force, which I assume is
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13
     what you're going to say.
              MR. PURPURA: It is. Thank you, Judge. I won't take
14
15
    more of the Court's time.
              THE COURT: Okay. Other than that, I found a few
16
17
     typos going through it last night with some names and things.
18
     I'll make those edits before it goes to -- a copy goes to the
     jury. And if I find anything else while I'm reading it, I'll
19
20
     correct that.
              MS. WICKS: Your Honor, I sent an e-mail to chambers.
21
     It was very late. I apologize.
22
23
              But in reviewing the instructions last night, I
     realized that there was not an instruction regarding
24
25
     informed -- or not informant -- witnesses with immunity.
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so in my e-mail, I included language.
 1
              THE COURT: Well, I don't know where that is. I
 2
     looked in the chambers -- did you mail it to the chambers, or
 3
     did you mail it to Ms. Childs?
 4
 5
              MS. WICKS:
                         I e-mailed it to Ms. Childs.
              THE COURT: Who's not here and I don't get that.
 6
 7
     looked in the chambers e-mail box this morning for anything,
     and it was not there.
 8
              MS. WICKS: I apologize. I can forward the e-mail to
 9
     the Court or read it into the record if I can get my phone.
10
11
          (Pause.)
12
              THE COURT: Okay. Do you want to read it to me.
13
              MR. NIETO: My apologies, Your Honor. If I can have a
14
     moment.
                         Your Honor, do you think you'll take a
15
              MR. HINES:
    break after the jury instructions for lunch and then you'll
16
17
     start after --
              THE COURT: Yes, particularly at this point. It's
18
             It's going to take me a while to read these
19
20
     instructions. So my thought would be, whenever I finish, early
21
     lunch and then go into argument.
22
              MR. WISE: Help everyone recharge a little bit.
23
              THE COURT: Yes.
              MR. WISE: At least for an hour and a half.
24
              MS. WICKS: It's revised from the Sand instruction,
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[Reading]: You have heard the testimony of a witness who
 1
     has testified under a grant of immunity. What this means is
 2
     that the testimony of the witness may not be used against him
 3
     in any criminal case except a prosecution for perjury or giving
 4
 5
     a false statement. You are instructed that the Government is
 6
     entitled to call as a witness a person who has been granted
 7
     immunity and that you may convict a defendant on the basis of
     such a witness's testimony alone if you find that their
 8
     testimony proves the defendant quilty beyond a reasonable
 9
10
     doubt.
11
              However, the testimony of a witness who has been
     granted immunity should be examined by you with greater detail
12
     than the testimony of an ordinary witness.
13
              You should scrutinize it closely to determine whether
14
15
     or not it is colored in such a way as to play guilt upon the
16
     defendant -- I can forward it to the Court.
17
              THE COURT:
                          Ms. Moyé?
              MR. NIETO:
                          I just did.
18
19
              THE COURT:
                         Can you get my e-mail up.
20
              If you can forward it to
21
              THE COURT:
                          Have you sent it?
22
                                I apologize, Your Honor.
              MS. WICKS:
                          Yes.
23
     want me to send it to chambers e-mail address as well so they
24
     can --
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THE COURT:

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That's probably a good idea.

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All right. Any objection to that?
 1
              MR. WISE: No, Your Honor.
 2
              THE COURT: Okay. We'll put that in on Page 8 maybe
 3
     after the plea agreement stuff. All right? Thank you.
 4
 5
              MS. WICKS:
                          Thank you, Your Honor.)
          (Bench conference concluded.)
 6
 7
          (Jury entered the courtroom at 11:24 a.m.)
                         Good morning. And be seated, please.
              THE COURT:
 8
              All right. So, ladies and gentlemen, we are -- as I
 9
     told you yesterday, we are now at the concluding part of the
10
     trial.
11
              What I'm about to do is read to you some instructions
12
     about the law that governs in this case. As I've mentioned, I
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     think while you're free to take notes if you'd like, you also
14
15
     will have a written copy of these instructions as well as the
16
     verdict form in the jury room when you go out to deliberate.
17
              After I give you the instructions, or at least most of
     my instructions, depending on where we are, maybe probably take
18
19
     a lunch break, but we'll see. And then you will hear closing
20
     arguments by counsel. Once those are all finished, I will have
21
     another few words to say to you before you begin to deliberate.
22
              Let me start by just sort of outlining for you a
23
     little bit.
                 There will -- first in these instructions, what
     you'll first hear are a series of legal principles that apply
24
     essentially in every criminal case having to do with evidence
25
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and evaluation of witnesses and that sort of thing.

Following that will be instructions on the law that applies to the specific charges, the types of charges that there are involved in this case. And I'll try to give you an idea of where we are along the way.

So first thing is thank you. I know all of us appreciate very much your patience with us and your attention during this case.

As I told you at the beginning, my job and yours are different. It's my job to instruct you on the law -- and let me know, by the way, if you have any trouble hearing me. It's your job to decide the facts and then apply the rules of law as I give them to you, apply them to the facts that you find.

You shouldn't single out any one sentence or individual point in these instructions and ignore the others. It's important to consider all the instructions as a whole.

Now, the lawyers may refer to some of the rules of law in their arguments, and that's perfectly fine. Obviously, if there's any difference that appears to you between the law that counsel state and what I give you in these instructions, you should follow these instructions.

The case is important to the Government, for the enforcement of criminal laws is a matter of prime concern for the community.

Equally, it is important to the defendants who are

charged with serious crimes.

And the fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater or lesser consideration than that I am sure you will give to each defendant.

Again, you and only you are the judges of the facts. So if any expression of mine or anything I may have done or said would seem to indicate any opinion that I have on any factual matter, please disregard that.

When you decide the facts, you may consider not only any evidence to which I may refer, if I do, not only any evidence to which counsel refer -- and I'm sure they will, but any testimony or exhibits that have been admitted in the case that you think are important to your decision.

Your verdict must be based solely on the evidence developed at trial or the lack of evidence.

It would be improper for you to consider, in reaching your decision as to whether the Government has met its burden of proof, any personal feelings that you might have about a defendant's or a witness's race, religion, national origin, sex, age.

The defendants are entitled to the presumption of innocence, and the Government has the burden of proof, as I will discuss in a moment.

Equally, it would be improper for you to allow any

feelings that you might have about the nature, the type of these crimes that are charged, to interfere with your decision-making process.

Under your oath as jurors, you are not to be swayed by prejudice or by sympathy. You are to be guided solely by the evidence in the case. And the question you must ask yourself as you go through the evidence is: Has the Government proved the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has proven the defendant guilty of the crime charged based solely on the evidence and subject to the law as I'm giving it to you.

It must be clear that once you let fear or prejudice or bias or sympathy interfere with your thinking, there's a risk you would not arrive at a true and just verdict.

If you have a reasonable doubt as to a defendant's guilt, you should not hesitate for any reason to return a verdict of not guilty.

On the other hand, if you find the Government has met its burden of proving a defendant's guilt beyond a reasonable doubt, you should not hesitate, because of sympathy or any other reason, to return a verdict of guilty.

Now, as I think I mentioned at the beginning, the statements, objections, and arguments of counsel are not evidence. That should not be considered as evidence.

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who called them; all of the exhibits that have been admitted into evidence, regardless of who offered them.

Now, any evidence as to which I sustained an objection or ordered it stricken must be entirely disregarded. And, again, anything you may have seen or heard outside the courtroom, including any newspaper or media publicity of any kind, is not evidence and must be entirely disregarded.

There are a number of exhibits that have been admitted into evidence in this case; they will be available for your review.

You may consider them for any purpose consistent with these instructions that will help you evaluate the merits of the case.

You should give the exhibits the weight and the credibility you find appropriate.

There have been times during the trial when I've been called on to rule on the admissibility of certain offered evidence. Again, it's the duty of the attorney for each side or each party to object if the other side offers testimony or other evidence that the attorney believes is not properly admissible.

You should not show any prejudice against an attorney or his or her client just because the attorney objects to the

admissibility of evidence or asks for a conference up here at the bench.

And you should also not be concerned with my rulings on the objections or the reasons for them because whether evidence that's being offered is admissible or not is purely a question of law. So you should not draw any factual inference from these questions, objections, and rulings.

In admitting evidence, if an objection's been made,

I'm not determining what weight should be given to that

evidence; that's up to you.

You must not guess what the answer might have been to any question if an objection was sustained, and you must not speculate as to the reason a question was asked or the reason for the objection.

Let me just re-emphasize: A lawyer's question to a witness is not evidence.

At times a lawyer may have incorporated into a question a statement that assumed certain facts to be true and then asked the witness if the statement was true.

If the witness denied the truth of that statement and there's no other evidence in the record that proves the assumed fact is true, you may not consider a fact to be true simply because it was contained in a lawyer's question.

Short version of that: The questions are not the evidence; the answers are the evidence.

Now, another way of looking at the evidence, again, as I think I told you at the beginning, is to call it direct or circumstantial.

By direct evidence, we mean something like the testimony of an eyewitness, a person who's present at an event, sees it, hears it, comes in and tells you what they saw or heard.

The other type is indirect or circumstantial evidence, proof of a chain of circumstances that point to the existence or nonexistence of other facts. And I gave you the sort of simple example of go off to work in the morning and the sun is shining. You happen to work in an office with no windows. You can't see outside.

But a couple hours later, one of your co-workers comes in with the dripping-wet umbrella or taking off a wet raincoat. You didn't look outside directly. You didn't see the rain. But based on what you did see, it would be reasonable to conclude it had been raining outside.

That's all there is to the definition of circumstantial evidence. You may infer -- you may decide or conclude, based on your reason and experience from some established fact, the existence or the nonexistence of another fact.

Circumstantial evidence is of no less value than direct evidence.

As a general rule, the law makes no distinction between the two of them. It's up to you. You are required to find the facts in accordance with all the evidence in the case that you find persuasive, direct and circumstantial.

Similar to that, let me just say that while you may consider only the evidence that's been presented -- and you may not guess or speculate about the existence of facts in this case; but as you consider the evidence, you're permitted to draw from facts that you find have been proved such reasonable inferences as seem justified in the light of your own experience.

In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence in the case.

Now, you, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You're not required to believe any witness, any particular witness, even if his or her testimony is uncontradicted.

When you decide whether to believe a witness, you should carefully scrutinize the testimony that was given, the circumstances under which each witness has testified, and every matter in evidence that tends to indicate whether that witness

is worthy of belief.

So consider each witness's intelligence, motive, and state of mind; his or her demeanor and manner while on the stand.

Consider the witness's ability to observe the matters as to which he or she has testified and whether the witness impresses you as having an accurate recollection of those matters. And consider also any relation that each witness may have to either side of the case, the manner in which each witness might be affected by the verdict.

Ask yourself whether the witness has any incentive or loyalty that might cause him or her to shade the truth. Or does the witness have any bias or prejudice or hostility that might have caused him or her to give you something other than a completely accurate account of the facts?

And consider the extent to which, if at all, the testimony of each witness is either supported or contradicted by other evidence.

Now, inconsistencies or discrepancies, differences in the testimony of a witness or between the testimony of different witnesses, may or may not cause you to discredit the testimony, because two or more people who witness an incident may see or hear it differently.

Innocent misrecollection, like failure of recollection, forgetfulness, in other words, is not an uncommon

experience.

So inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses should be considered by you; but in weighing their effect, you should consider whether these inconsistencies or discrepancies relate to a matter of importance or an unimportant detail and whether the discrepancy or inconsistency results from an innocent error or a willful falsehood.

Now, you have heard the testimony of law enforcement officials. The fact that a witness may be employed by the Government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration, greater or lesser weight, than that of an ordinary witness.

And at the same time, it's perfectly legitimate for defense counsel to perhaps try to attack the credibility of a law enforcement witness on the grounds that his or her testimony might be affected by a personal or professional interest in the outcome of the case. It's your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness. And you give that testimony whatever weight, if any, you find it deserves.

After you have considered all the factors that relate to the credibility of a witness which I've mentioned to you and some more that I will get to in just a minute, you may decide

to accept all the testimony of a particular witness, none of the testimony of a particular witness, or part of the testimony of a particular witness. You give the testimony of the witness the credibility and weight, if any, you think it deserves.

Now, turning away from witnesses for a moment, the Government has offered evidence in the form of audio recordings of conversations that were obtained through a court-authorized wiretap and through a recording device placed in a Baltimore Police Department vehicle with the consent of the Baltimore Police Department. The use of these procedures to gather evidence is perfectly lawful, and the Government is entitled to use the recordings in this case.

The Government also is permitted to hand out typed documents, transcripts of these recordings containing their interpretation of what appears on the recordings that have been admitted as evidence.

As I told you back at the beginning, these were given to you as an aid or a guide to assist you in listening to the recordings. They are not, in and of themselves, the evidence.

So I asked you when the recordings were played to listen very carefully to the recordings themselves. And, again, you should make your own interpretation of what you think is on the recordings based on what you heard. And if you thought you heard something differently from what appeared on the transcript, what you heard is controlling.

You'll have the transcripts in the jury room. But, again, please keep in mind their transcripts are not evidence. There may be disputes about the accuracy of certain parts of the transcripts, and if you have any question about the contents of a particular recording, you can send out a note. We'll probably have to bring you back in here. We can play for you any recording that you want to hear, and what you hear controls.

The Government also has presented exhibits in the form of charts and summaries, and those are admitted in place of the underlying documents that they represent in order to save time and avoid some unnecessary inconvenience. You may consider the charts and the summaries as you would any other evidence.

Now, during the trial, you may have heard testimony of witnesses. You may hear argument by counsel about whether the Government used specific investigative techniques. Just as a general example, whether a specific type of drug analysis was done, whether fingerprints were taken. And you may consider these facts in deciding whether the Government has met its burden of proof because, as I told you, you should look to all the evidence, as well as the lack of evidence, in deciding whether a defendant has been proved guilty.

But you're also instructed there's no legal requirement that the Government use any specific investigative techniques to prove its case.

The question for you to determine is whether or not, based on all the evidence -- or the lack of evidence -- the defendant's guilt has been proved beyond a reasonable doubt.

Now, turning back to witnesses for a moment, you have heard from some witnesses: Momodu Gondo, Jemell Rayam,
Maurice Ward, Evodio Hendrix, and Donald Stepp, who testified that they were actually involved in criminal activity and have plea agreements with the Government.

You also heard from a witness, Jimmie Griffin, for whom the Government may file a motion to reduce his sentence.

The Government may argue, as it is permitted to do, that it must take the witnesses as it finds them.

It may argue that only people who themselves take part in criminal activity have the knowledge required to show criminal behavior by others. And for these reasons, the law does allow the use of what is sometimes called accomplice testimony.

It's the law in Federal Court that the testimony of an accomplice or so-called cooperator may be enough in itself for conviction if the jury finds the testimony establishes guilt beyond a reasonable doubt.

But it's also the case that an accomplice or cooperator testimony is of such nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

You should ask yourselves whether these so-called accomplices or cooperators would benefit more by lying or by telling the truth. Was their testimony made up in any way because they believed or hoped they would somehow receive favorable treatment by testifying falsely? Or did they believe their interests would be best served by testifying truthfully?

If you believe the witness was motivated by hopes of personal gain, was the motivation one that would cause him to lie, or was it one that would cause him to tell the truth?

Similarly, you should bear in mind a witness who has entered into a plea agreement or expects a motion to reduce his sentence has an interest in this case different from an ordinary witness.

A witness who realizes he may be able to obtain his own freedom or receive a lighter sentence by giving testimony favorable to the prosecution may have a motive to testify falsely, so you must examine his testimony with caution and weigh it with great care.

In short, you should look at all the evidence in deciding what credibility and what weight, if any, you want to give to an accomplice or a cooperator witness.

Now, you have also heard the testimony of some witnesses who testified under a grant of immunity. What that means is that the testimony of the witness may not be used against him in any criminal case, except a prosecution for

perjury or giving a false statement.

Again, you're instructed the Government is entitled to call as a witness a person who's been granted immunity, and you may convict a defendant on the basis of such a witness's testimony alone if you find the testimony proves the defendant guilty beyond a reasonable doubt.

But the testimony of a witness who's been granted immunity should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it's colored or affected in such a way as to place guilt upon the defendant in order to further the witness's own interests.

For such a witness confronted with the realization that he can win his own freedom by helping to convict another has a motive to falsify his testimony, so such testimony should be scrutinized by you with great care. You should act upon it with caution. And if you believe it to be true, if you determine to accept the testimony, you may do that. You may give it such weight, if any, as you believe it deserves.

There's also been evidence introduced at the trial that the Government called a witness, a person who was using or addicted to drugs when the events that he or she observed -- I think a he in this case -- took place or who may have used drugs recently. I instruct you there's nothing improper about calling such a witness to testify about events within his

personal knowledge.

Again, on the other hand, his testimony must be examined with greater scrutiny than the testimony of an ordinary witness. The testimony of a witness who was using drugs at the time of the events he is testifying about or who has used drugs recently before his testimony may be less believable because of the effect the drugs may have on his ability to perceive or relate the events in question.

If you decide to accept his testimony, again, after considering it in light of all the evidence in the case, you give that testimony the weight, if any, you find it deserves.

And, again, you've heard testimony from Government witnesses: Mr. Gondo, Rayam, Ward, Hendrix, and Stepp, who each pled guilty to charges arising out of the same facts of this case.

As I think I also told you, you are instructed you may draw no conclusions or inferences of any kind about the guilt of the defendants on trial from the fact that a prosecution witness pled guilty to similar charges. That witness's decision to plead guilty was a personal decision about his own guilt, and it may not be used by you in any way as evidence against or unfavorable to the defendants on trial here.

And you also heard the testimony of one or more witnesses who were previously convicted of a crime punishable by more than a year in jail, what's sometimes referred to as a

felony. This prior conviction was put into evidence for you to consider in evaluating the witness's credibility.

You may consider the fact that a witness who testified is a convicted felon in deciding how much of his testimony to accept and what weight, if any, it should be given.

All right. Turning to the defendants, as I think I told you also at the beginning, the defendants began the trial here with a clean slate. It's called the presumption of innocence.

The presumption of innocence alone is sufficient to acquit a defendant unless you, after a careful and impartial consideration of all the evidence, are unanimously convinced beyond a reasonable doubt of the defendant's guilt.

This burden never shifts to the defendant, for the simple reason the law never imposes on a defendant in a criminal case the duty -- the burden or duty of calling any witness or producing any evidence.

Now, you'll note the Government's burden is not to prove guilt beyond all possible doubt, but rather beyond a reasonable doubt.

If the Government fails to meet this burden, you must find the defendant not guilty.

The defendants did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any other evidence because it's the Government's

burden to prove the defendant guilty beyond a reasonable doubt, and that burden remains with the prosecution throughout the entire trial. It never shifts to the defendant. A defendant is never required to prove that he is innocent.

So you may not attach any significance to the fact that a defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You simply may not consider this against the defendant in any way in your deliberations in the jury room.

The question of possible punishment of the defendant also is of no concern to you. It should not in any way enter into or influence your deliberations because the duty of imposing sentence, if a defendant is convicted, rests exclusively with the Court.

Similarly, the possible consequences of a not-guilty verdict are of no concern to you. Your job is to weigh the evidence in the case and decide whether or not the defendant has been proved guilty beyond a reasonable doubt solely on the basis of the evidence.

Now, those are what I would refer to as the preliminary instructions that apply generally in criminal cases.

I'm going to turn to the specific charges against the defendants as contained in the indictment.

I'll remind you, an indictment itself is not evidence.

It's not proof of any kind. It merely describes the charges that are made against the defendants.

Also, there are two defendants before you, and there are several separate counts or charges. Each count and each defendant must be considered separately. Your verdict as to one count or one defendant does not determine your verdict as to the other defendant or other charges.

Also, you may not draw any inference -- favorable or unfavorable -- towards the Government or the defendants on trial from the fact that certain persons were not named as defendants in the indictment or that certain persons are not currently on trial with these defendants.

These circumstances must play no part in your deliberations because whether a person should be named as a co-conspirator or indicted as a defendant and when or whether that person may go to trial is a matter within the sole discretion of the United States Attorney and the grand jury and the Court, so you may not consider it in any way in reaching your verdict as to the defendants on trial.

Further, the defendants are on trial only for the crimes charged in the indictment and not for any other conduct that may have been mentioned in the course of the trial.

You'll note the indictment charges the offenses were committed on or about certain dates.

The proof doesn't have to establish with certainty the

precise dates of the alleged offense or offenses. It's sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on or between dates that are reasonably near the dates or time frame alleged.

Now, there are four different types of charges I'm going to instruct you on, the first being a conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act, or RICO; then a charge of RICO itself; then a charge of what's called Hobbs Act robbery or extortion; and then a charge of use of a firearm in furtherance of a crime of violence.

I'm going to go through all these. They are separate counts. There is some relationship between them, as you will hear, particularly between the conspiracy to commit RICO and the RICO itself. But I'm going to outline all the elements of these cases -- these charges.

So, first, the indictment charges the defendants with conspiracy to violate, again, the Racketeer Influenced and Corrupt Organizations Act, the RICO. This means that the defendants have been charged with conspiracy to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity.

Count 1 charges the defendants as follows: It says, Beginning at a date unknown to the grand jury -- but at least by in or about 2015 -- through on or about the date of this superseding indictment -- and the date was June 22nd, 2017 --

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in the District of Maryland and elsewhere, the defendants, Daniel Thomas Hersl and Marcus Roosevelt Taylor, being persons employed by and associated with the BPD, Baltimore Police Department, an enterprise which engaged in and the activities of which affected interstate and foreign commerce, together with Momodu Gondo, Evodio Hendrix, Jemell Rayam, Maurice Ward, and Wayne Jenkins and other persons, known and unknown to the grand jury, did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree to violate what's called Section 1962(c) of Title 18, U.S. Code; that is, to conduct and participate, directly and indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity, racketeering activity consisting of multiple acts that are indictable, chargeable under, first of all, a federal offense, 18 U.S.C., Section 1343, which is wire fraud, and multiple acts involving robbery and attempted robbery, chargeable under a specific provision of the Maryland Code, and conspiracy, again, under the Maryland Code or -- and/or extortion and attempted extortion by state or local government officer or employee. That is also chargeable under the Maryland statute and conspiracy under the Maryland statute to commit those offenses. All right. Let me go into that in more specifics.

So the defendants are charged in Count 1 with violating Section 1962(d) of Title 18 of the U.S. Code. That

is the conspiracy section.

That section reads as follows: That it's unlawful for any person to conspire to violate any of the provisions of Subsection A, B, or C of this section. And I just referred you to Subsection C. Subsection C provides that it shall be unlawful for any person employed by or associated with any enterprise engaged in or the activities of which affect interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

Now, the word "racketeering" has certain implications in our society, but use of that term in this statute and in this courtroom should not be regarded as having anything to do with your determination of whether the guilt of the defendant has been proven.

This term is just a word that's used by Congress to describe the statute. So what's important is to focus on the elements of the offense, not the word "racketeering."

In order to prove that the defendant violated Section 1962(d), the conspiracy section, the Government must establish beyond a reasonable doubt each of the following elements of the offense: First, that there was an agreement among two or more persons to participate in an enterprise that would affect interstate commerce through a pattern of racketeering activity.

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Second, that the defendant knowingly and willfully became a member of that agreement.

And, third, that the defendant or another member of the conspiracy agreed to commit at least two racketeering acts, as I will define that term for you later in these instructions.

So going back to the first element, the first element the Government has to prove beyond a reasonable doubt is that there was a conspiracy among two or more people to participate in an enterprise that would affect interstate commerce through a pattern of racketeering activity.

What is a conspiracy? A conspiracy is an agreement among two or more people to achieve an unlawful object or purpose. To show a conspiratorial agreement, the Government doesn't have to prove that two or more people entered into a written agreement or a formal contract, but only that two or more people explicitly or implicitly came to an understanding to achieve the specific unlawful object or purpose, whether or not they were successful.

In this case the unlawful act or purpose is the agreement to participate in an enterprise that would affect interstate commerce through a pattern of racketeering activity, and I'm going to define those terms for you in more detail when I instruct you on Count 2, racketeering itself.

The second element the Government has to prove beyond a reasonable doubt is that the defendant you're considering

knowingly and willfully became a member of the conspiracy that's charged in the indictment.

So if you're satisfied that the conspiracy charged in the indictment did exist, you then ask yourselves: Who were the members of that conspiracy?

In deciding whether the defendant you're considering was, in fact, a member of the conspiracy, you should consider whether that defendant knowingly and willfully joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its objective as an associate or worker?

And in that regard, it's been said that for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or a stake in the outcome. You're instructed that proof of a financial interest in the outcome of a scheme is not essential; but if you find the defendant had such an interest, that's a factor you may properly consider in deciding whether or not a defendant was a member of the conspiracy charged in the indictment.

As I just said, before the defendant can be found to have been a conspirator, you must find that he knowingly joined in the unlawful agreement or plan. So the key question is whether the defendant joined the conspiracy with an awareness of the basic aims and purposes of the unlawful agreement.

It's important for you to note the defendant's

participation in the conspiracy must be established by independent evidence of his own acts or statements, as well as those of the other alleged co-conspirators and the reasonable inferences that may be drawn from them.

The defendant's knowledge is a matter of inference from the facts that have been proved.

In that connection, I instruct you that to become a member of the conspiracy, a defendant need not have known the identities of each and every other member. He need not have been aware of all their activities, and he need not have been fully informed as to all the details or the scope of the conspiracy in order to justify an inference of knowledge on his part.

I do want to caution you that mere knowledge or acquiescence without participation in the unlawful plan is not sufficient.

The fact that the acts of a defendant without knowledge merely happened to further the purposes or objectives of a conspiracy does not make the defendant a member.

More is required under the law.

What is necessary is that the defendant participate with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding, assisting in the accomplishment of those unlawful ends.

In short, the defendant, with an understanding of the

unlawful character of the conspiracy, must have intentionally engaged, advised, or assisted in it for the purpose of furthering the illegal undertaking. And he thereby becomes a knowing and willing participant in the unlawful agreement; that is to say, a conspirator.

The third element the Government has to prove beyond a reasonable doubt regarding Count 1 is that the defendant or another member of the conspiracy agreed to commit two racketeering acts.

The focus of this element is on the defendant's agreement to participate in the objective of the enterprise, to engage in a matter of racketeering activity, not on the defendant's agreement to commit the individual criminal acts.

The Government must prove that the defendant participated in some manner in the overall objective of the conspiracy and that the conspiracy involved or would have involved the commission of two racketeering acts.

The Government is not required to prove either that the defendant agreed to commit two racketeering acts or that he actually committed two such acts, although you may conclude that he agreed to participate in the conduct of the enterprise from proof that he agreed to commit or actually committed such acts.

For purposes of this count, Count 1, the conspiracy, the indictment alleges that certain racketeering acts were or

were intended to be committed as part of the conspiracy. And I'll read those to you when I instruct you in a minute on Count 2.

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Again, the Government has to prove that two of these acts were or were intended to be committed as part of the conspiracy, although it need not prove that a particular defendant committed or agreed to commit any of these acts, as long as the Government proves that the defendant participated in some manner in the overall objective of the conspiracy.

Now, Count 2 of the indictment charges the defendants with racketeering. Count 2 charges the defendants as follows: That from in or about 2011 until the date of the superseding indictment -- again, June 22nd, 2017 -- in the District of Maryland, Detectives Daniel Thomas Hersl and Marcus Roosevelt Taylor, the defendants, together with Momodu Gondo, Evodio Hendrix, Jemell Rayam, Maurice Ward, and Wayne Jenkins and others, known and unknown to the grand jury, being persons employed by and associated with the Baltimore Police Department, an enterprise engaged in and the activities of which affected interstate and foreign commerce, unlawfully and knowingly conducted and participated, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity; that is, through the commission of the following acts, Racketeering Acts 1 through 22. I'm going to instruct you on the specific

racketeering acts you'll be considering a bit later in these instructions.

Again, Count 2 of the indictment charges the defendants with violating Sections 1962(c) of Title 18 of the U.S. Code, and that section says it shall be unlawful for any person employed by or associated with any enterprise engaged in or the activities of which affect interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

In order to prove that the defendant violated Section 1962(c), the Government has to establish beyond a reasonable doubt each of the following five elements of the offense. This is as to Count 2.

First, that an enterprise existed as alleged in the indictment.

Second, that the enterprise affected interstate or foreign commerce.

Third, that the defendant was associated with or employed by the enterprise.

Fourth, that the defendant engaged in a pattern of racketeering activity.

And, fifth, that the defendant conducted or participated in the conduct of the enterprise through that pattern of racketeering activity.

I'm going to go through those five elements.

The first element the Government has to prove beyond a reasonable doubt is that an enterprise existed as alleged in the indictment. And an enterprise includes any legal entity, such as a government agency, partnership, corporation, or association.

The Government has charged that the enterprise in this case is the Baltimore Police Department. You are instructed that the Baltimore Police Department is a legal entity.

Accordingly, you may find that an enterprise existed.

The second element the Government must prove beyond a reasonable doubt is that the enterprise -- in this case the Baltimore Police Department -- was engaged in or had an effect on interstate or foreign commerce.

Interstate commerce includes the movement of goods, services, money, and people between states.

The Government must prove the enterprise engaged in interstate or foreign commerce or that its activities affected interstate commerce in any way, no matter how minimal.

It does not have to prove that the racketeering activity affected interstate or foreign commerce, although proof that racketeering acts did affect interstate or foreign commerce would be sufficient to satisfy this element.

It's not necessary to prove that the acts of any particular defendant affected interstate or foreign commerce as

long as the acts of the enterprise had such effect. And the Government's not required to prove that the defendant knew he was affecting interstate or foreign commerce.

The third element the Government must prove beyond a reasonable doubt is that the defendant was associated with or employed by the enterprise.

It's not required that the defendant have been employed by the enterprise for the entire time the enterprise existed, but it's required the Government prove beyond a reasonable doubt that at some time during the period indicated in the indictment, the defendant was employed by the enterprise.

Now, the fourth element the Government has to prove beyond a reasonable doubt is that the defendant engaged in a pattern of racketeering activity, and the Government has charged the defendants with committing the following racketeering acts.

I want to advise you, you heard a reference to 22 racketeering acts in the indictment. There are fewer than that. There are 16 that you are being asked to consider as to these defendants.

Racketeering Act 2 alleges that on or about

January 24th, 2014, in the District of Maryland,

Detective Taylor, the defendant, committed the following acts,

any one of which alone constitutes the commission of

Racketeering Act 2.

A is unlawfully conspired together with others, known and unknown to the grand jury, to commit robbery, in violation of Maryland Code. There's a specific section that will be in the instructions for you.

B, committed robbery in violation of the Maryland Code.

C, as an officer or employee of the State of

Maryland -- that is, as a police officer and employee of the

Baltimore Police Department -- unlawfully conspired together

with others, known and unknown to the grand jury, to wrongfully

obtain money, property, and anything of value from

Shawn Whiting with Shawn Whiting's consent under color and

pretense of office and by wrongful use of actual and threatened

force and violence, in violation of another provision of the

Maryland Code.

And, D, as an officer or employee of the state of Maryland -- that is, as a police officer and employee of the Baltimore Police Department -- wrongfully obtained money, property, and anything of value from Shawn Whiting with Shawn Whiting's consent under color and pretense of office, under color of official right, and by wrongful use of actual and threatened force and violence, in violation of Maryland law.

Racketeering Act 3 alleges that on or about

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November 5th of 2014, in the District of Maryland,
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     Detective Hersl, defendant, committed the following acts, any
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     one of which alone constitutes the commission of
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     Racketeering Act 3.
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              And it says: Committed robbery in violation of the
     Maryland statute and as an officer or employee of the State of
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     Maryland, specifically as a police officer and employee of the
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     Baltimore Police Department, wrongfully obtained money,
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     property, and anything of value from Jimmie Griffin with
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     Jimmie Griffin's consent under color and pretense of office and
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    by wrongful use of actual and threatened force and violence, in
     violation of the Maryland Code.
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              Racketeering Act 4 charges that on or about
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     November 27th, 2015, in the District of Maryland,
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     Detective Hersl, the defendant, committed the following acts,
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     any one of which alone constitutes the commission of
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     Racketeering Act 4:
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              And that is, committed robbery, in violation of
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    Maryland law.
                    That's A.
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              And, B, as an officer or employee of the State of
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    Maryland, as a police officer and employee of the Baltimore
     Police Department, wrongfully obtained money, property, and
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     anything of value from Herbert Tate with Herbert Tate's consent
     under color and pretense of office and by wrongful use of
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     actual and threatened force and violence in violation of the
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Maryland law.
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              Racketeering Act 5 alleges that on or about
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     November 28th, 2015, in the District of Maryland,
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     Detective Hersl, the defendant, committed the following acts,
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     any one of which is the commission of Racketeering Act 5:
              That is, A, committed robbery, in violation of
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     Maryland law.
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              B, as an officer or employee of the State of
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     Maryland -- that is, as a police officer and employee of the
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     BPD -- wrongfully obtained money, property, and anything of
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     value from Antonio Santiful with Antonio Santiful's consent
     under color and pretense of office and by wrongful use of
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     actual and threatened force and violence in violation of
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     Maryland law.
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              Racketeering Act 6 charges that on or about
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     February 17th, 2016, Detective Taylor, the defendant, committed
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     the following facts -- acts, excuse me, any one of which alone
     is the commission of Racketeering Act 6:
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              A, unlawfully conspired with others, known and unknown
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     to the grand jury, to commit robbery, in violation of Maryland
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     law.
              B, committed robbery in violation of Maryland law.
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              C, as an officer or employee of the State of
     Maryland -- that is, a police officer and employee of the
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25
     BPD -- unlawfully conspired, together with others, known and
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unknown, to wrongfully obtain money, property, and anything of value from Raytawn Benjamin with Raytawn Benjamin's consent under color and pretense of office and by wrongful use of actual and threatened force and violence in violation of Maryland law. That was the conspiracy.

And D is: As an officer or employee of the State of
Maryland -- that is, a police officer or employee of BPD -wrongfully obtained money, property, and anything of value from
Raytawn Benjamin with Raytawn Benjamin's consent under color
and pretense of office and by wrongful use of actual and
threatened force and violence, in violation of Maryland law.

Racketeering Act 8 charges that on or about

March 22nd, 2016, in the District of Maryland,

Detective Taylor, the defendant, committed the following acts,

any one of which alone is Racketeering Act 8:

A, unlawfully conspired to commit robbery in violation of Maryland law.

B, committed robbery in violation of Maryland law.

C, as an officer or employee of the State of Maryland, specifically an employee of the BPD, unlawfully conspired, together with others, to wrongfully obtain money, property, and anything of value from Oreese Stevenson with Oreese Stevenson's consent under color and pretense of office and by wrongful use of actual and threatened force and violence, in violation of Maryland law.

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And, D, as an officer or employee of the State of Maryland, again, a police officer or employee of the BPD, wrongfully obtained money, property, and anything of value from Oreese Stevenson with his consent under color and pretense of office and by wrongful use of actual and threatened force and violence under Maryland law -- in violation of Maryland law, that is.

Racketeering Act 10 charges that on or about July 8th of 2016, in the District of Maryland, Detective Hersl, the defendant, committed the following acts, any one of which alone is Racketeering Act 10:

A, unlawfully conspired to commit robbery in violation of Maryland law.

B, committed robbery in violation of Maryland law.

C, as an officer or employee of the State of Maryland, a police officer, employee of the BPD, unlawfully conspired together with others to wrongfully obtain money, property, and anything of value from Ronald Hamilton and Nancy Hamilton with Ronald Hamilton's and Nancy Hamilton's consent under color and pretense of office and by wrongful use of actual and threatened force and violence, in violation of Maryland law.

And, D, as an officer or employee of the State of
Maryland, specifically a police officer, employee of the BPD,
wrongfully obtained money, property, and anything of value from
Ronald Hamilton and Nancy Hamilton with their consent under

color and pretense of office and by wrongful use of actual threatened force and violence in violation of Maryland law.

Racketeering Act 11 charges that on or about

August 8th of 2016, Detective Hersl, a defendant, committed the following acts. Any one is a violation of Racketeering Act -well, any one is the commission of Racketeering Act 11.

Again, A is a conspiracy to commit robbery in violation of Maryland law.

B is committing robbery in violation of Maryland law.

C is as a police officer conspiring with others to wrongfully obtain money, property, and anything of value from Dennis Armstrong with his consent under color and pretense of office and by wrongful use of actual and threatened force and violence, in violation of Maryland law.

And D is as an officer or employee, again, police officer, employee of the BPD, wrongfully obtained money, property, and anything of value from Dennis Armstrong with Dennis Armstrong's consent under color and pretense of office and by wrongful use of actual and threatened force and violence in violation of Maryland law.

And the last one on this robbery and Maryland law violations, Racketeering Act 12 alleges that on or about September 7th of 2016, in the District of Maryland, Detective Taylor, the defendant, committed the following acts, any one of which is Racketeering Act 12:

A, unlawfully conspired to commit robbery in violation of Maryland law.

- B, committed robbery in violation of Maryland law.
- C, as an officer or employee of the BPD, conspired with others to wrongfully obtain money, property, and anything of value from Sergio Summerville with Sergio Summerville's consent under color and pretense of office and by wrongful use of actual and threatened force and violence, in violation of Maryland law.

And, D, as an officer or employee of the State of Maryland -- that is, a police officer, employee of the BPD -- wrongfully obtained money, property, and anything of value from Sergio Summerville with his consent under color and pretense of office and by wrongful use of actual and threatened force and violence, in violation of Maryland law.

Now, there's a second set of racketeering acts that are included in Racketeering Acts 14 through 22. These are acts of alleged wire fraud.

Racketeering Acts 14 through 22 allege that on or about the dates I'm going to give you -- and they're listed in the jury instructions as well -- that the defendants -- I'll identify each one as we go through each count -- that the defendants and other persons, known and unknown to the grand jury, devised and intended to devise a scheme and artifice to defraud the citizens of Maryland and the Baltimore

Police Department and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, specifically, that they submitted individual overtime reports, claiming to have worked hours when they, in fact, did not. And the defendants failed to work during their assigned shifts.

These individual overtime reports and information concerning when the defendants worked their assigned shifts were transmitted, according to the allegations, via interstate electronic wires to ADP, the company that managed BPD's payroll approximately every 14 days.

So the indictment alleges that on or about the following dates in the District of Maryland and elsewhere, the defendants that I will name, for the purpose of executing this scheme and artifice to defraud that I just described to you, that these defendants transmitted or caused to be transmitted by means of wire communication in interstate commerce the following writing signals and sounds. And this is alleged to be a violation of Title 18, U.S. Code, Section 1343. It's called wire fraud.

So Racketeering Act No. 14 alleges that the

Defendant Hersl, on July 6th, 2016, caused an interstate

electronic wire between BPD and Baltimore, Maryland, and ADP,

the company that manages the payroll, for the period June 23rd,

2016, to July 6th of 2016.

Count 15 also charges Defendant Hersl. It alleges that on or about July 20th of 2016, he transmitted or caused to be transmitted an interstate electronic wire between BPD and ADP for the period July 7th, 2016, to July 20th, 2016.

And Racketeering Act 17 charges the Defendant Taylor on, again, July 20th, 2016, with transmitting or causing to be transmitted an interstate electronic wire between BPD and ADP for that pay period, July 7th to July 20th, 2016.

Racketeering Act 18 says that Defendant Hersl, on or about August 3rd of 2016, caused an interstate electronic wire between BPD and ADP for the period July 21st to August 3rd of 2016.

And Number 20 charges Defendant Taylor with transmitting or causing to be transmitted on that same date, August 3rd of 2016, an interstate electronic wire between BPD and ADP for that pay period, July 21st to August 3rd.

And finally, as to the racketeering acts, Count 21 charges Defendant Hersl on August 17th, 2016, with transmitting or causing to be transmitted an interstate electronic wire between BPD and ADP for the pay period August 4th through August 17th of 2016. And Racketeering Act 22 charges that Defendant Taylor caused or -- caused to be transmitted in interstate commerce on or about August 17th an interstate electronic wire between BPD and ADP for that pay period, August 4th to August 17th.

Now, on this count, Count 2, you must find that the defendant you are considering -- and I told you to consider them separately -- committed at least two of the 16 alleged racketeering acts that I've just listed for you within ten years of each other.

Because these racketeering acts alleged violations of Maryland law, underlying violations of Maryland law, and violations of federal law, the wire fraud, I need to instruct you on the elements of each of those underlying offenses after I finish instructing you on what the Government must prove to establish a pattern of racketeering activity.

So to prove that the acts constituted a pattern of racketeering activity, the Government has to prove these acts are related to each other and that they pose a threat of continued criminal activity.

It's not sufficient for the Government to prove only that a defendant committed two of the racketeering acts I've just described, because a series of disconnected acts does not constitute a pattern.

A series of disconnected crimes does not constitute a pattern of racketeering activity, and they don't amount to or pose a threat of continued racketeering activity.

So to prove that the acts of racketeering are related, the Government has to prove these acts have the same or similar purposes, results, participants, victims, or methods of

commission or that they're otherwise interrelated by distinguishing characteristics. They're not isolated events.

To prove that the racketeering acts pose a threat of continued racketeering activity, the Government has to establish that, one, that the acts were part of a long-term association that exists for criminal purposes or, two, the acts were a regular way of conducting the defendant's ongoing legitimate business or, three, the acts were a regular way of conducting or participating in an ongoing and legitimate RICO enterprise.

So the indictment charges each defendant with the commission of specific racketeering acts. And as I just told you, the Government has to prove beyond a reasonable doubt that at least two of the racketeering acts that are listed were committed by the defendant you're considering within the prescribed time.

You may not find that the defendant you're considering, you may not find him guilty unless you all agree unanimously that at least two particular racketeering acts were committed by that defendant.

So it's not enough that you all might believe that two racketeering acts were committed. You can't find the defendant guilty if some of you think that the only racketeering acts were, you know, A and B were committed by the defendant and some of you think that Acts C and D were committed by the

defendant. There have to be at least two specific racketeering acts that all of you believe were committed by the defendant you're considering in order to convict that defendant.

The fifth and the final element the Government must prove beyond a reasonable doubt is that the -- on Count 2 is that the defendant conducted or participated in the conduct of the enterprise through that pattern of racketeering activity.

So to conduct or participate in the conduct of the enterprise means that the defendant must have played some part in the operation or management of the enterprise.

The Government is not required to prove that the defendant was a member of upper management. An enterprise is operated not only by those in upper management, but also by those lower down in the enterprise who act under the direction of upper management.

So -- and on this point, on this element, in addition to proving the defendant played some part in the operation or management of the enterprise, the Government must also prove that there is some meaningful connection between the defendant's illegal acts and the affairs of the enterprise.

So to satisfy this part of the element, the Government has to establish either that the defendant's position in the enterprise facilitated his commission of those illegal acts and that the racketeering acts had some impact or effect on the enterprise or that the acts were in some way related to the

affairs of the enterprise or that the defendant was able to commit the acts by virtue of his position or involvement in the affairs of the enterprise.

Now, we're still on Count 2. I need to define the elements of each type of alleged Racketeering Act.

So the elements of the offense of conspiracy to commit robbery in violation of Maryland law are as follows:

That the defendants agreed with at least one other person to commit the crime of robbery.

And, two, that the defendants entered into the agreement with the intent that the crime of robbery be committed.

Under Maryland law, a person may not attempt or attempt to commit robbery. Robbery is the taking and carrying away of property from someone else or someone's presence and control by force or threat of force with the intent to deprive the victim of the property.

So in order to convict a defendant of robbery, the Government must prove that the defendant knowingly took the property by force or threat of force and that the defendant intended to deprive the victim of the property.

For the defendant to be guilty of robbery, he must have intended to deprive the victim of the property. This means the Government must prove the defendant knowingly and intentionally took and carried away the property with the

intent to deprive the victim of that property.

To deprive another of property means to withhold property of another permanently or for such a period of time as to appropriate to keep a portion of its value or with the purpose to return it only after payment of reward or other compensation or to dispose of the property or use it in a way making it unlikely that the owner will recover it.

Now, as I said, intent, a person's intent may be inferred from all the facts and circumstances, including the words and acts and conduct of the defendant.

The intent must have been present at the time of the taking of the property.

Also, in order to convict a defendant, it is necessary that the property was both taken and carried away. In order to constitute a carrying away, the defendant must have acquired complete control of the property, at least for an instant, even if he or she immediately abandoned or returned the property to its rightful owner.

The property need not be owned by the victim. The property may be taken from someone who had custody over the property, who had legal or special interest in it.

And the victim doesn't have to have been in the same room as the property when it was taken.

In determining whether property was taken by force or threat of force, the force may be actual, as by application of

physical force, or constructive, through threat of force or intimidation.

The force or the threat of force must have accompanied or come before the robbery.

The element of fear does not have to be shown. It's sufficient if the force or threat of force were such as to induce, excite reasonable fear of danger that caused the victim to surrender his or her property.

The degree of force is immaterial as long as it was enough to compel the victim to part with his or her property.

Robbery does not require that the defendant's violence or intimidation acts be done for the very purpose of taking the victim's property. It's enough if a defendant takes advantage of a situation which he created for some other purpose.

So long as the force and intent precede the taking, the intent to steal need not coincide with the force. A robbery conviction may be based on evidence that shows the intent to steal was formed after the application of force.

That was the definitions of "conspiracy" and "robbery" under Maryland law.

I'm now talking about the elements of the offense of conspiracy to commit extortion in violation of Maryland law, and those elements are as follows:

First, that the defendants agreed with at least one other person to commit the crime of extortion.

And, second, that the defendants knowingly entered into the agreement with the intent that the crime of extortion be committed.

Under Maryland law, an officer or employee of the State or a political subdivision may not wrongfully obtain or attempt to obtain money, property, or anything of value from a person with that person's consent if the consent is obtained under color or pretense of office or by wrongful use of actual or threatened force or violence.

Extortion. Extortion under color or pretense of office is the corrupt collection of an unlawful fee by an officer under color of office.

In order to convict a defendant of extortion under color or pretense of office, the Government must prove:

First, the defendant was an officer or employee of the State of Maryland.

Second, the defendant obtained property or services not due to him or his office.

Third, that this property or service was given with the consent of the giver to the defendant, who knew that the property was given because of the power of the defendant's official position.

Now, in order to convict the defendant of extortion by wrongful use of actual or threatened force or violence, the Government must prove:

First, that the defendant knowingly and wrongfully obtained the property of another.

Second, that he obtained this property with the victim's consent but that the consent was compelled by the wrongful use or threat of force, violence, or fear.

If you decide that force or violence was used or threatened to obtain the property, that is wrongful. You do not have to consider whether the defendant believed the property was rightfully his. Using force or violence or threats of force or violence to obtain property is wrongful.

Moving on to the other racketeering acts: 14, 15, 17, 18, 20, 21, and 22, the wire fraud racketeering acts. They allege that the defendants devised a scheme to defraud -- that means false representations and, in furtherance of that scheme, knowingly caused interstate wires to be used. The relevant statute on that is a federal statute, Section 1343 of Title 18, which says [reading]: Whoever having devised or intended to devise -- intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writing, sign, signal, picture, or sound for the purpose of executing, carrying out, that scheme or artifice shall be guilty of a crime.

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In order to find that a defendant committed wire fraud, the Government has to prove each of the following elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud or to obtain money or property by materially false and fraudulent pretenses, representations, or promises as charged in the indictment.

Second, that the defendant knowingly and willfully participated in that scheme to defraud with knowledge of its fraudulent nature and with the specific intent to defraud.

And, third, in carrying out that scheme, the defendant used or caused the use of interstate wires as charged in the indictment.

So the first element the Government has to prove beyond a reasonable doubt is that there was a scheme or artifice to defraud the Baltimore Police Department and the State of Maryland of money or property by means of false or fraudulent pretenses, representations, or promises.

A scheme or artifice is merely a plan for the accomplishment of an object.

Scheme to defraud is any plan, device, or course of action to obtain money or property by means of false or fraudulent pretenses, representations, or promises that are reasonably calculated to deceive persons of average prudence.

"Fraud" is a general term that embraces all the

various means that human ingenuity can devise and that are resorted to by an individual to gain an advantage over another by false representation, suggestions, or suppressions of the truth or deliberate disregard for the truth. So a scheme to defraud is just a plan to deprive another of money or property by a trick, a deceit, a deception, or a swindle.

The scheme to defraud is charged to have been carried out by making false or fraudulent statements, representations, claims, documents. A statement, a representation, a claim, or a document is false if it's untrue when it's made and was known then to be untrue by the person making it or causing it to be made.

A representation or statement is fraudulent if it's falsely made with the intention to deceive. Deceitful statements of half truths or the concealment of material facts, the expression of an opinion not honestly entertained may also constitute false or fraudulent statements under the statute.

The deception need not be based on spoken or written words alone. The arrangement of the words or the circumstances in which they're used may convey the false and deceptive appearance. If there is deception, the manner in which it's accomplished is immaterial.

A failure to disclose information may also constitute a fraudulent representation if the defendant was under a legal or professional or contractual duty to make such a disclosure

and the defendant actually knew the disclosure was required to be made and the defendant failed to make that disclosure with the intent to defraud.

Now, the false or fraudulent representation or failure to disclose must relate to a material fact or matter. And by "material fact," we mean one that would reasonably be expected to be of concern to a reasonable and prudent person who's relying on the representation or statement in making a decision.

So if you find a particular statement of fact to have been false, then you must decide whether that statement was one a reasonable person might have considered important in making his or her decision.

Same principle applies to fraudulent half truths or omissions of material facts.

In addition to proving that a statement was false or fraudulent and that it related to a material fact, in order to establish a scheme to defraud, the Government must prove the scheme contemplated depriving another of money or property.

Now, the Government's not required to prove the defendant personally originated the scheme to defraud, and it's not necessary the Government prove the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss. In this case it so happens that the Government does contend that the proof establishes that

persons were defrauded and that the defendant profited.

So although whether or not the scheme actually succeeded is not the question, you may consider that. You may consider whether it succeeded in determining whether this scheme existed.

A scheme to defraud doesn't have to be shown by direct evidence. It may be established by all the circumstances and facts in the case. So if you find the Government has met its burden of proof that a scheme to defraud as charged did exist, then you consider the second element.

And the second element that the Government must prove beyond a reasonable doubt is that the defendant participated in the scheme to defraud knowingly, willfully, and with the specific intent to defraud.

"Knowingly" means to act voluntarily and deliberately rather than mistakenly or inadvertently.

"Willfully" means to act knowingly and purposely with an intent to do something the law forbids; that is to say, with bad purpose, either to disobey or disregard the law.

An intent to defraud means to act knowingly and with the specific intent to deceive for the purpose of causing some financial or property loss to another.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to decide like any other fact question. And this question

involves a person's state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote down or stated that as of a particular time in the past, he committed an act with fraudulent intent.

Such direct proof is not required. The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence based on a person's outward manifestations, their words, their conduct, their acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them. So circumstantial evidence, if believed, is of no less value than direct evidence.

The essential elements of the offense have to be established beyond a reasonable doubt.

Now, because an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud.

Now, a defendant has no burden to establish a defense of good faith. The burden is on the Government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt.

Under the wire fraud statute, even false representations or statements or omissions of material facts do

not amount to a fraud unless done with fraudulent intent.

However misleading or deceptive a plan may be, it's not

fraudulent if it was devised or carried out in good faith. An

honest belief in the truth of the representations made by a

defendant is a good defense, however inaccurate the statements

may turn out to be.

So as a practical matter, in order to sustain the charges against the defendant, the Government must establish beyond a reasonable doubt that he knew his conduct as a participant in the scheme was calculated to deceive and, nonetheless, he associated himself with the alleged fraudulent scheme for the purpose of causing some loss to another.

To conclude on this element, if you find the defendant was not a knowing participant in the scheme or that he lacked the specific intent to defraud, you should find the defendant not guilty.

On the other hand, if you find that the Government has established beyond a reasonable doubt not only the first element -- that is, the existence of the scheme to defraud -- but also the second element, that the defendant was a knowing participant and acted with specific intent to defraud, and if the Government also establishes the third element that I'm about to instruct you, then you have a sufficient basis upon which to convict the defendant or specifically to find that a racketeering act has been proved.

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The third and final element the Government must establish beyond a reasonable doubt in regard to the charge of wire fraud, those racketeering acts, is the use of an interstate wire communication in furtherance of the scheme to defraud.

So the wire communication must pass between two or more states -- for example, a wire transfer of funds between banks in different states.

The use of the wires need not itself be a fraudulent representation, but it must further or assist in carrying out the scheme to defraud. It's not necessary for the defendant to be directly or personally involved in the wire communication as long as that communication was reasonably foreseeable in the execution or the carrying out of the alleged scheme to defraud in which the defendant is accused of participating.

In this regard, it's sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others. This does not mean the defendant must specifically have authorized others to transfer the funds.

When one does an act with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires can reasonably be foreseen, even though not actually intended, then he causes the wires to be used.

The Government contends that it was reasonably foreseeable that the wires would be used in the ordinary course of business -- as an example, to transfer funds between banks -- and, therefore, that the defendant caused the use of the wires.

Now, with respect to the use of the wires, the Government must establish beyond a reasonable doubt the particular use charged in the indictment. And that's the list of on-or-about dates that I read to you in connection with ADP.

Now, the Government doesn't have to prove that the wires were used on the exact dates charged in the indictment.

It's sufficient if the evidence establishes beyond a reasonable doubt that the wire was used on a date substantially similar to the date charged in the indictment.

That concludes my instructions on Count 2.

Count 3 charges the Defendant Taylor and Count 5 charges the Defendant Hersl with the federal offenses of Hobbs Act robbery, also known as interference with interstate commerce by robbery, and Hobbs Act extortion, also known as obstructing interstate commerce through the use of extortion.

Count 3, specifically Count 3 charges that on or about March 22nd, 2016, in the District of Maryland, the defendant, Marcus Roosevelt Taylor, did unlawfully obstruct, delay, and affect and attempt to obstruct, delay, and affect commerce and the movement of articles and commodities in commerce by robbery

and extortion as those terms are defined in 18 U.S.C., Section 1951.

Specifically, that the defendant knowingly and unlawfully took and obtained and attempted to take and obtain from a person and the presence of such person United States currency -- that is, approximately \$200,000 -- against such person's will by means of actual and threatened force, violence, and fear of injury, immediate and future, and with their consent induced by wrongful use of actual and threatened force, violence, and fear. That's Count 3.

Count 5 charges that on or about July 8th of 2016, in the District of Maryland, the Defendant Daniel Thomas Hersl did unlawfully obstruct, delay, and affect and attempt to obstruct, delay, and affect commerce and the movement of articles and commodities in commerce by robbery and extortion, as those terms are defined in 18 U.S.C., Section 1951, in that the defendant knowingly and unlawfully took and obtained and attempted to take and obtain from a person in the presence of such person United States currency -- that is, approximately \$20,000 -- against such person's will by means of actual and threatened force, violence, and fear of injury, immediate and future, and with their consent induced by wrongful use of actual and threatened force, violence, and fear.

So in these two counts, 3 and 5, the indictment charges the defendants with violating a specific federal law,

Section 1951 of Title 18. That section says that whoever in any way or degree obstructs, delays, or affects commerce or the movement of an article or commodity in commerce by robbery or extortion or attempts or conspires to do so or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in this violation -- in violation of this section commits a crime.

That's what the statute says.

Now, for the counts that I just read to you, 3 and 5, the following instructions apply:

First, as to robbery, for this count, these two counts, 3 and 5, robbery is the unlawful taking or obtaining of personal property of another against his will by threatening or actually using force, violence, or fear of injury, immediately or in the future, to person or property.

The elements of the offense of robbery in violation, again, of this Section 1951 are, first, a person -- the defendant you're considering -- knowingly obtained or took the personal property of another or from the presence of another.

Second, the person took this property against the victim's will by actual or threatened force, violence, or fear of injury, whether immediately or in the future.

And, third, that as a result of the person's actions or those of others whom he aided and abetted, interstate commerce or an item moving in interstate commerce was delayed,

obstructed, or affected in any way or degree.

Those are three elements.

To go back over them, the first element for a robbery charge is that the person committing the crime must knowingly obtain or take the personal property of another or from the presence of another. For these two counts, 3 and 5, the term "property" includes money and other tangible and intangible things of value.

The second element of a robbery charged is that the defendant or those whom he aided or abetted unlawfully took this property against the victim's will by actual or threatened force, violence, or fear of injury, whether immediately or in the future.

In considering whether force, violence, or fear was planned to be or was actually used or threatened during the robbery itself, you should give those words their common and ordinary meaning and understand them as you normally would. The violence does not have to be directed at the person whose property was taken. The use or threat of force or violence might be aimed at a third person.

A threat may be made verbally or by a physical gesture. Whether a statement or physical gesture by the defendant actually was a threat depends upon the surrounding facts.

As I've just instructed you, you must determine

whether the defendant, the one you're considering, knowingly and willfully threatened to use force, violence, or fear to unlawfully obtain property or whether force, violence, or fear was planned to be used or actually used or threatened during the robbery itself by the defendant or those whom he aided and abetted.

Fear exists if a victim expresses -- experiences anxiety, concern, or worry over expected personal harm, business loss, or over financial or job security.

The existence of fear must be determined by the facts existing at the time of a defendant's actions.

Your decision whether a defendant used or threatened fear of injury involves a decision about what the intended victim's state of mind would have been at the time of the defendant's actions.

It's obviously impossible to ascertain or prove directly a person's subjective feeling. You can't look into a person's mind to see what his or her state of mind is or was, but a careful consideration of the circumstances and the evidence should enable you to decide whether fear would reasonably have been the victim's state of mind.

Looking at the situation and the actions of the people involved may help you determine what their state of mind was.

Again, you may consider this kind of evidence, which we call circumstantial evidence, in determining whether

property was obtained by the defendant or those whom he aided and abetted through the use or threat of fear.

If you decide that the defendant or those whom he aided and abetted took or attempted to take another's property against his or her will by the use or threat of force, violence, or fear of injury, you must then decide whether that action affected interstate commerce in any way or degree.

If you decide that there was any effect at all on interstate commerce, that is enough to satisfy this element.

The effect can be minimal. If you find the victim directly participated in interstate commerce or if you find that the assets of a business engaged in interstate commerce were or would have been depleted as a result of the harm to the individual victim, then you may find the requirements of this element have been satisfied.

The defendant need not have intended or anticipated an effect on interstate commerce. You may find the effect is a natural consequence of his actions.

If you find the defendant intended to take certain actions -- that is, he did the acts charged in the indictment in order to obtain property -- and you find those actions either have caused or would probably cause an effect on interstate commerce, then you may find the requirements of this element have been satisfied.

Those were the elements of robbery as charged in

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Counts 3 and 5.
 1
              I also need to define "extortion" to you as charged in
 2
     Counts 3 and 5.
 3
              Extortion is the obtaining of another person's money
 4
 5
     or property with his consent when that consent is induced or
 6
     brought about through the use or threatened use of force,
     violence, or fear.
 7
              The elements of the offense of extortion, in violation
 8
     of this federal law, are:
 9
              First, that the defendant wrongfully obtained the
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11
     property of another.
              Second, that he obtained this property with the
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13
     victim's consent, but the consent was compelled by the wrongful
     use or threat of force, violence, or fear.
14
              And, third, as a result of the defendant's actions,
15
16
     interstate commerce or an item moving in interstate commerce
17
     was delayed, obstructed, or affected in any way or degree.
              And I have previously instructed you on these elements
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     when I instructed you on Hobbs Act robbery.
19
20
              Now, if you do not find that the defendant himself
     committed the crime, there is a separate theory which would
21
22
     allow you to find the defendant guilty of Count 3 or Count 5 of
23
     the indictment. It's called aiding and abetting, and I
     referred to that as I was reading the elements.
24
```

Under the aiding and abetting statute, it is not

necessary for the Government to show that a defendant himself physically committed the crime with which he's charged in order for the Government to meet its burden of proof.

A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find the defendant guilty of the offense charged if you find beyond a reasonable doubt that the Government proved another person actually committed the offense with which the defendant is charged and that the defendant aided or abetted that person in the commission of the offense.

So as you can see, the first requirement is that you find that another person committed the crime charged.

Obviously no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place.

But if you do find a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

In order to aid or abet another to commit a crime, it's necessary that the defendant knowingly associate himself in some way with the crime and that he participate in a crime by doing some act to help make the crime succeed.

To establish that the defendant knowingly associated himself with the crime, the Government must establish that the

defendant intended that the robbery take place.

To establish that the defendant participated in the commission of the crime, the Government must prove that he engaged in some affirmative conduct or overt act, the specific purpose of bringing about that crime.

The mere presence of the defendant where a crime is being committed, even combined with knowledge by the defendant that a crime is being committed or merely associating with others who were committing a crime, is not sufficient to establish aiding and abetting.

One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor.

An aider and abettor must know the crime is being committed and act in a way that he intends to bring about the success of the criminal venture.

So to decide whether a defendant aided or abetted the commission of a crime with which he's charged, you may ask yourself these questions:

Did he participate in the crime charged as something he wished to bring about?

Did he knowingly associate himself with a criminal venture?

Did he seek by his actions to make the criminal

venture succeed? If he did, the defendant is an aider and abettor and, therefore, guilty of the offense.

If, on the other hand, your answer to any one of those questions was "no," then the defendant is not an aider and abettor and you must find him not guilty.

I am very close to the end.

Counts 4. Count 4 charges Defendant Taylor and

Count 6 charges Defendant Hersl with possession of a firearm in

furtherance of a crime of violence.

So Count 4 charges that on or about March 22nd, 2016, in the District of Maryland, the Defendant

Marcus Roosevelt Taylor did knowingly, intentionally, and unlawfully possess a firearm in furtherance of a crime of violence for which he may be prosecuted in a court of the United States. That is a violation of 18 U.S.C., Section 1951, as set forth in Count 3 of the indictment.

So Count 4 relates back to Count 3, which is incorporated by reference.

And Count 6 charges that on or about July 8th, 2016, in the District of Maryland, the Defendant Daniel Thomas Hersl did knowingly, intentionally, and unlawfully possess a firearm in furtherance of a crime of violence for which he may be prosecuted in a court of the United States. And specifically, that's the charge in Count 5 of the indictment, which is incorporated, which we've just been discussing, Counts 3 and 5.

Okay. The relevant federal statute on this subject, 18 U.S. Code, Section 924(c), says [reading]: Any person who, during and in relation to any crime of violence for which the person may be prosecuted in a court of the United States, uses or carries a firearm or who, in furtherance of any such crime, possesses a firearm shall be guilty of a crime.

In Count 4, the Defendant Taylor is charged with possession of a crime -- excuse me, possession of a firearm in furtherance of a crime of violence that's charged in Count 3.

So if, upon all the evidence, you find the Government has failed to prove Count 3 beyond a reasonable doubt, then you would not even consider Count 4. You would only consider Count 4 if you first find that the defendant's guilty under Count 3.

Similarly, in Count 6, the Defendant Hersl is charged with possession of a firearm in furtherance of a crime of violence charged in Count 5. So if you find the Government has failed to prove Count 5 beyond a reasonable doubt, then you would not consider Count 6.

If you do proceed to consider those offenses, the Government has to prove each of the following elements beyond a reasonable doubt to prove the defendant guilty of possession of a firearm in furtherance of a crime of violence.

First, as I've said, that the defendant committed a crime of violence -- that's Count 3 or Count 5 -- for which he

might be prosecuted in a court of the United States.

Second, that he knowingly possessed a firearm in furtherance of that crime charged in Count 3 or Count 5, whichever one you're considering.

So that first element that the Government has to prove beyond a reasonable doubt that the defendant committed a crime of violence for which he might be prosecuted relates to Counts 3 and 5. As I've told you, the defendants are charged in Counts 3 and 5 with committing the crimes of Hobbs Act robbery and Hobbs Act extortion.

I am instructing you that the crimes of Hobbs Act robbery and Hobbs Act extortion are crimes of violence, but it's up to you to decide whether the Government has proved beyond a reasonable doubt that the defendant you're considering committed the crime of Hobbs Act robbery or extortion as charged in Counts 3 and 5.

The second element the Government has to prove beyond a reasonable doubt as to Counts 4 and 6 is that the defendant knowingly possessed a firearm in furtherance of a crime of violence.

A firearm is any weapon that will or is designed to or may be readily converted to expel a projectile -- that means shoot a bullet -- by the action of an explosive.

To prove that a defendant possessed the firearm in furtherance of the crime, the Government must prove the

defendant had possession of the firearm and that such possession was in furtherance of that crime.

Possession means the defendant either had physical possession of the firearm on his person or dominion and control over the place where the firearm was located and had the power and intention to exercise control over the firearm.

To possess a firearm in furtherance of the crime means that the firearm helped forward, advance, or promote the commission of the crime.

The mere possession of a firearm at the scene of a crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied.

And to satisfy this element, you must find the defendant possessed the firearm knowingly; means he carried the firearm purposely, voluntarily. It wasn't an accident, wasn't a mistake.

It also means he knew the weapon was a firearm, as we commonly use that word. But the Government's not required to prove that the defendant knew he was breaking the law.

Now, as I previously instructed you, if you do not find a defendant himself committed the crime, there is a separate theory that allows you to find a defendant guilty of Counts 4 and 6. That's called aiding and abetting.

Again, it's not necessary for the Government to show

that a defendant himself physically committed the crime with which he's charged in order for the Government to meet its burden of proof because a person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself.

So in order to find a defendant guilty of aiding and abetting the possession of a firearm in furtherance of a crime of violence, you must find the defendant took some affirmative act in furtherance of that offense with the intent of facilitating the offense's commission.

The person takes an affirmative act in furtherance of an offense if he facilitates -- that is, if he acts to help or assist or make possible -- any part, though not necessarily every part, of the crime.

An affirmative act includes all assistance rendered by words, act, encouragement, support, or presence.

So as a result, in the context of aiding and abetting the possession of a firearm in furtherance of a crime of violence, a person takes the necessary affirmative act if he facilitates the possession of a firearm or the commission of the crime of violence. It's not necessary that he facilitate both the possession and the crime of violence.

A person acts with the required intent if he knowingly associates himself in some way with the crime and participates in the crime by doing some help -- excuse me, some act to help

make the crime succeed.

This intent requirement is satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense.

In the context of aiding and abetting the possession of a firearm in furtherance of a crime of violence, a person acts with the requisite intent if he had advanced knowledge that a confederate would possess a firearm in furtherance of a crime of violence. Advanced knowledge means knowledge at a time that the person can attempt to alter the plan or withdraw from the venture.

Knowledge of the gun may -- but does not have to -exist before the underlying crime is begun. It is sufficient
if the knowledge is gained in the midst of the underlying
crime, as long as the individual continues to participate in
the crime and has a realistic opportunity to withdraw.

You may, but you need not, infer -- you may decide that the defendant had sufficient foreknowledge, advanced knowledge, if you find the defendant continued his or her participation in the crime after a gun was displayed or used by a confederate.

You will be very happy to hear that I have finished reading to you what I need to read to you right now. You will have these instructions in the jury room, and I will have just two more pages for you at the conclusion of the arguments.

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May I see counsel at the bench.
 1
          (Bench conference on the record:
 2
              THE COURT: Any objections or concerns that occurred
 3
     as we were going along reading these instructions?
 4
 5
              MR. WISE: Not from the United States, Your Honor, no.
              THE COURT:
                          Okay.
 6
 7
              MS. WICKS: Not on behalf of Mr. Taylor.
              MR. PURPURA: Can I sneak in, Jen?
 8
 9
              MS. WICKS: Yes, sure.
10
              MR. PURPURA:
                            Thank you.
11
              Judge, I do apologize for the last-minute objection.
     I do have an objection if the Court would turn to Page 29 of
12
     the instructions. That's on the Maryland definition of
13
14
     robbery.
15
              THE COURT:
                          Yes.
16
              MR. PURPURA: Right where it says, "Robbery does not
17
     require, but the " -- okay. The sentence that begins [reading]:
18
     It is enough that the defendant take advantage of the situation
19
     which he created for some other purpose.
20
              That's not the law. It should be for some other
     wrongful or criminal purpose.
21
22
                         This is right out of the pattern
              MR. WISE:
23
     instruction.
                   It's not . . .
              THE COURT: Okay. You're saying that the word --
24
     "some other wrongful purpose"?
25
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MR. PURPURA: Yeah, right.
 1
              THE COURT: What's your citation for that?
 2
              MR. PURPURA: That would be Metheny, and that's
 3
     when -- that's where all this intent starts dating back.
                                                               It's
 4
 5
    under Metheny, yes.
              And Metheny's purpose was for rape, kidnapping, and
 6
             And then later on, he took something and that was
 7
    murder.
     deemed a robbery at that point.
 8
 9
              THE COURT: Okay. And you're saying that --
                         I can bring up our -- grab my binder.
10
              MR. WISE:
11
     is the pattern instruction that's been approved by the -- the
    pattern instructions approved by the Bar. It's not modified in
12
13
     any way.
              We do cite Metheny. I mean, Metheny is authority for
14
15
     a number of points, but the instruction itself doesn't require
     the insertion of that.
16
17
              MR. PURPURA: Whether the Maryland pattern jury
     instruction does or does not, I still suggest it's in error and
18
     especially how it's going to be applied in this particular
19
     case. And it will be argued by Government counsel.
20
              THE COURT: All right. Well, as you pointed out,
21
     unfortunately, this is the first time I'm hearing this
22
23
     objection. We're going to take a break. Obviously, I'm going
     to let them go for lunch and I'll look at it.
24
25
              I mean, if necessary, I can always come back and tell
```

```
them I have left out a word and read them the instruction
 1
 2
            And I'll tell them that the instructions they have in
     aqain.
     the jury room are what control, in any event.
 3
              MR. PURPURA: Thank you.
 4
 5
              THE COURT: Anything else?
                         I noticed one thing with just the numbering
              MR. WISE:
 6
 7
     in the robbery elements.
              THE COURT: Yes. There was something strange with the
 8
 9
    numbering.
              MR. WISE: 2 and 3, just so they don't question if it
10
11
    has, they're like -- if there's one missing. It's Page 28.
     should be 1 and 2 --
12
13
              THE COURT: First, we had a person -- under Maryland
     law, a person may not commit or attempt to commit robbery.
14
15
                         It's the way the statute is written.
              MR. WISE:
16
     That's the whole robbery statute.
17
                         Okay. But here's where we have --
              THE COURT:
              MR. WISE: Yes. I just wanted to so they're not
18
19
     wondering if one got left out.
20
                         Okay. There were some other places where
              THE COURT:
     I just saw plurals or what-have-you, and the wire fraud
21
22
     instructions talked about convicting as though it were a charge
23
     of wire fraud as opposed to a Racketeering Act. So I'm going
     to clean these up, and I'll give you a final version.
24
25
              MR. PURPURA:
                            Thank you.
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Thank you.)
 1
              THE COURT:
                          Okay.
          (Bench conference concluded.)
 2
              THE COURT: Ladies and gentlemen, we are going to take
 3
     the lunch recess at this point. And I will ask you please to
 4
 5
     be back here at 2 o'clock, and at that point we will begin
 6
     hearing the closing arguments of counsel.
 7
              Thank you very much.
          (Jury left the courtroom at 1:04 p.m.)
 8
          (Luncheon recess taken.)
 9
          (2:04 p.m.)
10
11
              THE COURT: You can be seated.
              And if counsel want to approach the bench.
12
          (Bench conference on the record:
13
              THE COURT: So I looked at both the Maryland Pattern
14
15
     Jury Instructions and Metheny over the break and found a couple
16
     of things.
17
              On Page 28 and 29 of this particular version, I will
18
     say that I did not see something that made me think I have to
19
     add "wrongful" in front of the precise language that we had
20
     been talking about with Mr. Purpura.
21
              On the other hand, it did seem to me that the word
     "wrongful" should be added. In terms of the definition of
22
23
     robbery, I mean at the bottom of Maryland Page 28, it says -- I
     would propose to add "wrongful." Robbery is the wrongful
24
25
     taking and carrying away of property.
```

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```
1
              MR. PURPURA:
                            Judge, I'm sorry. I'm not seeing it.
 2
              THE COURT: New version -- oh, I'm sorry. We e-mailed
     them to you, but --
 3
              MR. PURPURA: Oh, yeah.
                                       Thank you.
 4
 5
              MR. WISE:
                         I knew you would.
              THE COURT: So bottom Page 28.
 6
 7
              MS. WICKS:
                          Yes.
                         Okay. I added -- I'm proposing to add the
 8
              THE COURT:
     word "wrongful" in front of "wrongful taking and carrying away
 9
     of property." That's based on looking at Metheny and finding
10
11
     that the Maryland Court says robbery is the felonious taking
     and carrying away of the personal property of another from his
12
13
    person.
              So that has to be wrongful.
14
              But the other thing that I found is that the reason
15
16
     there was no 1 is because we left out 1, the Maryland Pattern
17
     Jury Instructions.
              Item No. 1, which certainly makes sense, is that the
18
     defendant took property from another person's presence and
19
20
     control.
              MR. WISE: So it was 2 and 3, then.
21
22
              THE COURT: It was 2 and 3.
23
                         Got it.
              MR. WISE:
              THE COURT: Yes. So I would propose to re-read to the
24
25
     jury just telling them that I accidentally left out a piece of
```

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```
the definition of robbery and just read the bottom of Page 28
 1
     through those three elements rather than make them hear the
 2
     entire thing again.
 3
                         That's fine.
              MS. WICKS:
 4
 5
              MR. PURPURA: May I still -- I would like to have an
 6
     exception to the Court --
              THE COURT: Yes.
 7
              MR. PURPURA: -- as I indicated before.
 8
 9
              I don't know what page it's on now, but the sentence
     is [reading]: It is enough that the defendant take advantage
10
11
     of a situation which he created for some other purpose.
              And I suggest it should be either "wrongful" or
12
13
     "criminal purpose."
14
              THE COURT: It's on Page 30 now.
15
              MR. PURPURA: Okay.
16
              THE COURT: And you'll have an exception. I think the
17
     taking has to be wrongful. There has to be force. There could
18
    be more than one purpose for which the force is used.
19
     there's force, and then there's wrongful taking.
20
              In any event, that precise word in that precise
21
     sentence I don't think is supported by the case law at this
22
    point. And I think the other -- all the other instructions
23
    will cover that.
24
              MR. PURPURA:
                            Thank you.
25
              MR. WISE:
                         Thank you, Your Honor.
```

```
Just for the record, Mr. Taylor joins in
 1
              MS. WICKS:
     the exception.
 2
                          Certainly. Okay. And I'll read that one
              THE COURT:
 3
    brief piece, and then we'll get into closing.
 4
 5
              MS. WICKS:
                          Your Honor, I just wanted to ask, I know
     yesterday you had inquired of the jury if they could stay
 6
 7
     later.
            Have we heard back from them and they're able to stay
     later?
           Or --
 8
                          I don't know. I haven't asked them.
              THE COURT:
                                                                 Ι
 9
     don't see how -- I was hoping we'd be further along than this,
10
11
    but let's see where we are at the break.
              MS. WICKS: Okay. Thank you, Your Honor.)
12
13
          (Bench conference concluded.)
          (Jury entered the courtroom at 2:11 p.m.)
14
              THE COURT: All right. Welcome back. And be seated.
15
16
              And very briefly, ladies and gentlemen, I realized
17
     over the lunch break that I forgot to read to you one small
18
    piece of the definition of "robbery" under Maryland law.
     worry; this will be short. But I need to re-read you
19
     something. And, again, I'll just remind you, it's the full,
20
21
     written instructions that control at the end of the case.
22
              So under Maryland law, as I've said, a person may not
23
     commit or attempt to commit robbery. Robbery is the wrongful
     taking and carrying away of property from someone else or
24
     someone's presence and control by force or threat of force with
25
```

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```
the intent to deprive the victim of the property.
 1
              In order to convict the defendant of robbery, the
 2
     Government must prove -- there are three elements:
 3
              One, that the defendant took property from another's
 4
 5
     person -- excuse me, from another person's presence and
     control.
 6
              That the defendant knowingly took the property by
 7
     force or threat of force.
 8
              And, three, that the defendant intended to deprive the
 9
     victim of the property.
10
11
              No other changes.
              So with that, we'll turn to the Government for its
12
13
     argument.
              I should advise you in advance, I quess, that you're
14
15
     going to hear from the Government twice. They have the
16
     opportunity for rebuttal after defense counsel speak, if they
     choose to do that and, the reason is, of course, that the
17
18
     Government has the burden of proof in this case.
              But we'll start with Mr. Hines.
19
20
              MR. HINES: Mr. Zweizig, can you hear me?
              Good afternoon.
                               I'd like to begin by speaking about
21
     the thirty-second and final witness who was called in the
22
     Government's case.
23
              At the age of 26, Officer James Kostoplis was
24
     entrusted with two tools: A gun and a badge.
25
```

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Officer Kostoplis took an oath to serve and protect.

He joined the Baltimore Police Department and he was entrusted to use those tools for good. He was assigned to the Gun Trace Task Force, one of the most elite units in the Baltimore Police Department.

At the age of 26, James Kostoplis was approached by Sergeant Wayne Jenkins and 17-year veteran Daniel Hersl. Those two men took James Kostoplis for a ride. They drove him to an alley, they asked him to leave his phone in the vehicle, and Jenkins and Hersl, side by side, walked to the end of that vehicle and looked at James Kostoplis, and Jenkins asked: What would you do if we were following a high-level drug dealer? Would you take money?

James Kostoplis, he had a choice at that moment. He could choose to use his tools for good or he could choose to use his tools for evil.

And in that moment, James Kostoplis told those two men, 17-year veteran Daniel Hersl and Wayne Jenkins, exactly what he thought about their idea. He said, No, that's a terrible fucking idea. You can't have a badge on your chest and do that. That's what separates us from criminals.

At some point during the career of these two men (indicating), Daniel Hersl, Marcus Taylor, they were given that exact same opportunity to make that choice. When that occurred, it occurred some time prior to 2014.

And if 26-year-old James Kostoplis could stand up to Wayne Jenkins and 17-year veteran Daniel Hersl, then these two men certainly could have made that same choice, but they did not. They chose differently, and that's why we're here today.

No man is above the law and no man is beneath the law. Not once in the judge's instructions did you hear the concepts of "above the law" or "beneath the law."

Yet throughout this trial, throughout the questioning by the defense and their arguments, they've suggested to you that a different standard should apply to them. They've asked witness after witness after witness about their past. They've suggested that people that come from certain backgrounds have certain criminal histories, have engaged in conduct in the past, deserve to have their property taken from them.

By that same token, these two men have suggested that they were entitled to that property; that they were above the law; that because they were detectives on an elite unit, they should be given a free pass because they were getting guns off the street.

But that's not the standard that was articulated by Judge Blake earlier today. The standard that you must follow is the law that she articulated, and that law says there's equal justice for all.

Good afternoon, ladies and gentlemen. I want to, first, on behalf of myself, Mr. Wise, Special Agent Jensen,

```
Sergeant Sieracki, Mr. Kerrigan, we want to thank you for your
 1
     attention, your jury service throughout this trial,
 2
     several-week trial, your notes, your questions throughout the
 3
     trial. This is important, and we appreciate your service.
 4
 5
              The first thing I'd like to do today is start with the
     counts that you've heard about and discuss the charges and how
 6
     the relevant facts relate to those charges.
 7
              I'm going to begin with Count 2, the racketeering
 8
     count, because this involves each of the racketeering acts that
 9
10
     you've heard about in this trial.
11
              When you receive the verdict sheet, when you go back,
     you will elect a foreperson. When you elect that foreperson,
12
     you can decide however you want to go about the verdict sheet,
13
     but we're going to start with Count 2 here today.
14
              The evidence in the case shows -- which we'll go
15
16
     through -- that both Daniel Hersl and Marcus Taylor are guilty
17
     of racketeering.
18
              There are five elements of racketeering. Four of the
     elements are not in dispute. The Government bears the burden
19
20
     of proving each of these elements beyond a reasonable doubt,
21
    but we can tick off four of them rather quickly.
22
              First, that an enterprise existed as alleged in the
23
     indictment. Judge Blake has instructed you that the enterprise
```

in this case is the Baltimore Police Department and it is a

legal entity. That meets the definition of an enterprise.

24

25

Second, that the enterprise affected interstate or foreign commerce. Director of Fiscal Services Elaine Harder came and testified that the Baltimore Police Department, through the city of Baltimore, purchases items that are made outside the state of Maryland. Those items include cars, bullets, uniforms. They're shipped into the state of Maryland, and that satisfies that element.

Third, that the defendants were associated with or employed by the enterprise. You heard from Lieutenant Friel that Detective Hersl began with the Baltimore Police Department in 1999 through 2017. He was an employee.

Detective Taylor was an employee through 2009, from 2009 through 2017. This element is met.

I'm going to skip the fourth element for a moment 'cause we're going to come back to that.

The fifth element you must decide is whether the defendant conducted or participated in the conduct of the enterprise through the pattern of racketeering activity.

The evidence must show that the defendant played some part of the operation of the enterprise.

The judge has instructed you, that does not mean that Detective Hersl or Detective Taylor had to be the leaders of the Baltimore Police Department.

What the instructions show is that an enterprise is operated not only by those in upper management, but also by

those lower down in the enterprise who act under the supervision of upper management.

The evidence shows the defendants were able to commit their crimes by virtue of their positions as detectives on this elite unit, and this element is met.

So I'm going to return to Count -- fourth element of Count 2, the Government must prove that the acts of racketeering are related to each other and that they pose a threat of continued activity.

For that fourth element, you have heard evidence in this case about robberies and extortions involving multiple citizens.

For Defendant Hersl, you've heard about Griffin, Tate, Santiful, the Hamiltons, Armstrong, as well as time and attendance fraud over the course of four pay periods.

For Taylor, you've heard about Shawn Whiting,
Raytawn Benjamin, Stevensons, Sergio Summerville, and time and
attendance fraud over the course of three pay periods.

Not a single charged episode in Racketeering Act 2 relies upon only the word of the person who had their money taken. Not a single one.

In his opening, Mr. Wise told you that you would get an inside look in the Baltimore Police Department. That inside look was provided to you by the co-defendants in this case that these men chose to commit their crimes with.

So in the episodes you've heard from not only the victims, but co-defendants. You've received in evidence additional information, including bank records, photographs of cash that citizens had before their money was taken from them. You've seen wiretap calls, mic recordings from the car. Evidence that corroborates the citizens who came in here and told you what happened to them.

And you are the detectives when you go back into that jury room, and you will see how that evidence stitches together and shows that these defendants committed these acts.

Now, the racketeering acts are robberies, extortions.

And there's two types of extortions. There's extortions with

force and extortions under color or pretense of office.

So I'm going to start with robbery. The judge has instructed you on the elements. A robbery is the taking and carrying away of property from someone else, or someone else's presence and control, by force or threat of force, with the intent to deprive the victim of the property.

Throughout this trial we asked every single citizen who took that stand whether they were restrained, whether they were arrested.

And you heard testimony not only from these citizens, but from the officers who engaged in some of these crimes as well. Every episode had force applied. Force is as simple as handcuffs restraining a victim (indicating).

Not only did those episodes have force, but there was the threat of force in every single episode as well.

Rightfully so, individuals testified in this case that when the police came to their house with vests, guns, that they submitted, they gave up, and that's the element of the threat of force that they established. They told you what they believed would happen to them if they resisted.

You'll be asked to make a distinction between robbery and extortion. We submit to you that the evidence shows in every single racketeering act except for one, every single one of those racketeering acts is a robbery except for Jimmie Griffin. The key distinction is whether or not there was consent.

An extortion is when an officer -- officer or employee of the state may not wrongfully obtain or attempt to obtain money, property, or anything of value from a person with the person's consent, if the consent is obtained by wrongful use or actual or threatened force of violence.

Jimmie Griffin testified that he consented. That's why we asked the question over and over to every single witness. Every single other witness in this case testified that they did not consent to having their property taken.

And third, you will be asked to also consider whether there's an extortion under color or pretense of office. An officer or employee of the state may not wrongfully obtain or

attempt to obtain money, property, or anything of value from a person with the person's consent, if the consent is obtained under color or pretense of office.

So when you go to your verdict sheet, Option 1, if you find the Government has met its burden beyond a reasonable doubt, is whether there was a robbery. The conspiracy to commit robbery or a robbery. And I'll show you the verdict sheet in just a moment.

If you find that there was consent, and only if you find there was consent, then you should move on to the extortion questions and consider whether the Government has met its burden of establishing that there was an extortion.

If you do go to the extortion, you'll be asked to decide between one or both types of extortion.

Conspiracy to commit robbery is that -- the Government must prove first that the defendants agreed with at least one other person to commit the crime of robbery and that the defendants entered into the agreement with the intent that the crime of robbery be committed.

Conspiracy is a simple concept. It's a tacit agreement. It's an understanding to commit an unlawful objective.

The judge has instructed you that that agreement need not be formal. It need not be signed in writing. It can be as simple as a statement between two co-defendants, or, as the

judge has instructed you, actions often speak louder than words.

You will also be asked to consider, if you find that there's an extortion instead of a robbery, whether there was a conspiracy to commit extortion.

First, we're going to go through chronological order the racketeering acts, and we're going to talk first about the robbery and extortion of Shawn Whiting.

Mr. Whiting was asleep in his home. He was in his boxers. The police came to his house. He heard his daughter cry. He testified in this case.

And Ward, Detective Ward, Co-Defendant Ward testified to give you that inside look as to what exactly happened in this episode.

Mr. Whiting testified that he had \$23,970 in his home prior to the search. He had a photo from his phone dated one week prior to the search which showed \$16,000 of that. That was the drug money. He testified that the remainder of the money was earned from his job as a painter.

He had 4 and a half kilograms of drugs in his house.

And when he -- he said when he received his paperwork, only

3 kilograms of drugs were reported and \$7,650.

Force was applied when the officers -- and Mr. Whiting testified to this -- the officers, including Mr. Taylor, went up into his bedroom; they restrained him when he got out of

bed; they took and deprived him of his money.

Ward testified that he and Taylor looked at each other and Taylor said, "Look out for me." That's what he said to Ward, which Ward knew (snaps fingers) at that moment meant that Taylor wanted to take that money. And Ward agreed. Ward took that money. He took \$3,000 and then gave \$1500 back to Detective Taylor.

But even before that happened, the evidence shows that additional money and drugs were taken. Detective Taylor was with the evidence at the Baltimore Police Department. The money appeared to be lighter from the amount of money that was at the house to the amount of money that was ultimately submitted (indicating).

You heard from Detective Leimbach of the
Baltimore County Police Department. He's a DEA Task Force
Officer. He observed the money at the house, and he testified
that he observed that it was lighter when he finally got the
submission from the officers.

So when you go to your verdict sheet, you'll be asked for Racketeering Act 2, whether Defendant Taylor committed A or B or both.

A is an unlawful conspiracy to commit robbery.

And B is robbery, substantive robbery.

The evidence in this case shows that Defendant Taylor committed both of those crimes. He agreed with Ward to take

that money. He instructed Ward, "Look out for me." They came to an agreement.

And the substantive crime of robbery also was committed when Taylor was in that room and took that money.

Turning to Count 3, the extortion of Jimmie Griffin, the only person to consent to the taking of his money.

Detective Hersl arrested Jimmie Griffin in the back of Evesham Avenue. At that time Jimmie Griffin had \$6,000 on his person.

You heard from Samara Irby in this case. Samara Irby is an HIV counselor. She's never been arrested in her life.

Never committed a crime in her life. She testified that she gave Jimmie Griffin, immediately prior to that arrest, \$6,500.

And Jimmie Griffin took the stand and he testified that he received from her \$6,000.

You'll recall the judge's instructions, that sometimes there's minor differences between the recollection of witnesses for an event that occurred in 2014.

The fact that both those witnesses didn't get up there and say that they -- it was \$6,500 shows that they weren't colluding about that recollection.

Jimmie Griffin also had \$5,000 in a safe at his home and \$1,000 in his dresser. The bank records for his cousin show that his cousin received a significant sum of money deposited to his bank account, \$266,000. And in the days

```
leading up to that, after he received that wire, he withdrew
 1
     almost $12,000 from that bank account.
 2
              Mr. Griffin testified that his cousin, Mr. --
 3
     Mr. Creighton, was also dealing drugs, gaining significant cash
 4
 5
     revenue from that as well.
              When Mr. Hersl arrested him, he took the money from
 6
 7
     Mr. Griffin's person and stuck it in his pocket. That's what
     the evidence shows in this case.
 8
              Hersl said, as he did that, "This guy is making more
 9
     money than me."
10
11
              For a robbery, as the judge has instructed you, the
     Government must prove that the defendant took property from
12
     another person's presence and control, that the defendant
13
     knowingly took the property by force or threat of force, and
14
15
     that the defendant intended to deprive the victim of the
16
     property.
              Intent is required under the extortion element prong
17
     as well.
18
              Intent is satisfied in every single one of these
19
20
     episodes when Defendant Hersl, at the time of the taking, took
21
     the money from the citizen and stuck it in his pocket instead
     of an evidence bag. Not in one of these instances did Hersl
22
23
     put the money in an evidence bag (indicating).
              Mr. Purpura, in his opening, argued, argued that
24
     Mr. Hersl didn't have the intent to take the money.
25
```

But what's relevant under the law is Hersl's intent at the time of the taking, not prior to the arrest.

In other words, Mr. Hersl, in every one of these episodes, could have had a hundred percent intent going into the episode to commit a lawful arrest. He could have gone into that episode and said, Mr. Griffin is a drug dealer, I'm going to arrest him. He could have applied force; and at that moment that he applied force, he may not have been thinking about taking the money.

But the intent matters at the time of the taking, when he actually takes the money. The force can precede the taking.

And in every single case, what Defendant Hersl did is he took the money and put it in his own pocket, and the intent element is satisfied.

So for Racketeering Act 3, Jimmie Griffin did testify that he consented. And the Government has proven beyond a reasonable doubt that Mr. Griffin committed extortion -- or was the victim of extortion by Mr. Hersl and that the extortion involved the wrongful use and threatened force of violence and extortion under color and pretense of office.

Turning to Racketeering Act 4, the robbery/extortion of Herbert Tate.

This is the robbery that occurred on Robb Street.

Mr. Tate, an HVAC engineer for 21 years, was walking down that street.

```
Mr. Tate testified that he didn't contact the FBI.
 1
                                                                   He
     didn't make a complaint. The FBI found him.
 2
              Mr. Tate testified that he had made a jail call to his
 3
     fiancée. The police took his money. He had received $1,163 in
 4
 5
     a paycheck.
              He testified that he paid daycare bills for his
 6
 7
     children and some other expenses and he had $530 on his person
     when he was arrested.
 8
              Tate testified that Officer Fassl detained him.
                                                               Не
 9
     said Fassl was, quote, cool and treated him with respect.
10
11
              But he did not know why he was being detained. And he
     saw Mr. Hersl walk to the end of the alley, near that retaining
12
13
     wall, down an alley, he was there for seven to ten minutes, and
     then came back with something.
14
              When Mr. Tate asked what Mr. Hersl had, Mr. Hersl
15
16
     said, "I don't have to show you a fucking thing. I just have
17
     to prove it in court."
18
              Mr. Tate's case was dismissed. And, as you can see
19
     from the photograph here, Mr. Hersl had no vantage point to see
20
    Mr. Tate walk down that street. Mr. Tate said that his
     evidence paperwork said that Mr. Hersl accused him of placing a
21
22
     bag on a retaining wall. That's impossible from the photograph
23
    here.
              Mr. Hersl took the money and reported only $216.
24
```

Sergeant Swinton testified that only \$216 was turned in.

25

you can see, he's the signing officer on the submission slip.

He did not report the rest of that money.

The defense in this case has asked Mr. Tate over and over and over again about dollar bills. They've asked him ones, fives, tens, twenties. Those suggest drug distribution.

And what Mr. Tate says is, "Everyone has dollar bills, sir."

And then at the same time, the defense asked other witnesses if large amounts of money, hundreds of dollars of bills, that suggests drug distribution.

The defense will have you believe that anybody who carries cash is a drug dealer, and that's not the case here.

When Mr. Purpura, when the defense for Mr. Hersl was finished, defense counsel for Mr. Taylor got up and asked Mr. Tate a series of questions.

Mr. Taylor wasn't even implicated in this episode, but you'll recall some of the questions. Robb Street is not a great neighborhood and Mr. Tate said that's what you label it as, but it's a great neighborhood to me.

These are the questions that are designed to get you to believe that these citizens are beneath the law; that because of where they come from, because of who they are, they don't deserve a fighting chance, but that is not the law in this case.

Mr. Tate left Baltimore City, he's moved away, and he lost his job after this arrest.

Mr. Tate testified that he did not consent and that he was fearful of what would happen if he tried to walk away from Hersl.

At the time of Tate's arrest, in front of Tate, Hersl told Fassl, "Keep the money." The evidence control submission shows that Hersl got the money. Hersl took the money before turning it into evidence.

The next racketeering act is Racketeering Act 5 involving Antonio Santiful. Mr. Santiful also was contacted by the FBI. He was paid in cash under the table when he worked night shifts cleaning commercial buildings. He came in in his construction uniform.

On November 28th, he testified, in 2015, he was visiting a friend on Aiken Street when Hersl arrested him. He had been playing video games on the front porch with a group of friends when Hersl ran up to him.

Santiful testified that Hersl took \$700 off his person.

Theresa Anderson, with Baltimore Police Department, testified that only \$218 was turned in. That leaves a difference of \$482.

Mr. Santiful's testimony is corroborated by the jail call, the jail call he made the night of his arrest at a moment in time when he did not believe anyone would ever listen to it.

He said in that call, "I just had like \$700 in my 1 pocket, yo. Look, the police took all the money I had." 2 Mr. Santiful took the stand in this case and testified 3 about that money. 4 5 When the defense crossed him, they asked him about a 2006 gun conviction that he had, and Mr. Santiful told the 6 7 defense that he did not commit that conviction and that the arresting officer in that case was Wayne Jenkins. They relied 8 on that case to try and establish that Mr. Santiful was a 9 10 criminal and therefore was beneath the law and he deserved it. 11 But what's interesting is that at other times, you'll hear Mr. Purpura say that Wayne Jenkins is a liar; you can't 12 trust a word he says. Yet they relied on his conviction in 13 this case. 14 Turning to Racketeering Act 5, the verdict sheet, 15 16 force was applied to Mr. Santiful. He was under the threat of 17 force. He testified about that. A robbery was proven, and you 18 should find that a robbery was proven on the verdict sheet. Racketeering Act 6 is the robbery/extortion of 19 20 Raytawn Benjamin. 21 Detective Ward testified on the stand about this. Не testified that Jenkins, Taylor, and Ward used a technique 22 23 called a door pop where they would drive up to citizens who

And when they ran at them on this occasion,

were standing in the road and run at them.

24

25

Mr. Benjamin started running. They stopped him. They chased Mr. Benjamin first. They stopped him. They arrested him. They used force. They put him in handcuffs.

Taylor searched him and took the money off of him.

Ward testified that Taylor took the cash, and instead of submitting it into an evidence bag, he gave some of that cash to Ward and kept the rest.

The elements of robbery are met and the elements of conspiracy to commit robbery are met because there was an agreement between Ward and Taylor to take that money. They had an understanding and they had robbed citizens before, including Shawn Whiting.

The next racketeering act, you've heard a lot of testimony about this case. This is the case involving the Stevensons, Oreese Stevenson and Keona Holloway.

March 22nd, 2016, Mr. Stevenson was sitting in a vehicle when Wayne Jenkins, Taylor, Hendrix, Ward drove up the wrong way on a one-way street, jumped out, looked in the vehicle, took Oreese Stevenson. Jenkins took him into a van.

Jenkins talked to Oreese Stevenson, interrogated him, and then Jenkins came out and he said, "This is a big one," and right then and there Ward and Hendrix, who testified, said they knew the game was on, that they were going to get money. They were going to be able to rob this guy. Taylor was there as well. Ward and Hendrix said that his reaction was "reaction of

excitement."

And at that moment these officers decided to do everything but a legitimate law enforcement investigation.

They took their police vests off. They went to Mr. Stevenson's house on Baker Street. They pretended to be Mr. Stevenson's relatives to do a sneak-and-peek into the house to see if there was any money to steal. Taylor went into the house. Hendrix went into the house. Ward went into the house. They didn't find anything.

Meanwhile, Donald Stepp testified that Wayne Jenkins called him to go to the Stevensons' house on Heathfield Avenue. Wayne Jenkins, a bail bondsman, shows up there. He's about to go into their house when the police officers arrive, Taylor, Ward, Hendrix, and Jenkins.

They create a ruse to establish that someone was running from the house. But Mr. Stepp's testimony on this point is key, the kid that he had seen had already left before that, and the kid was not trying to actually get into that house. He was actually -- or, sorry, he was not trying to leave that house. He was trying to get into that house.

Once the officers arrived, they don't have a search warrant. They roll into the house, do a sneak-and-peek, find items in the basement.

Wayne Jenkins, according to the testimony of Mr. Stepp, takes two bags of cash up and out of the house. He

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takes 2 kilograms of cocaine, goes to Donald Stepp, who's sitting outside, gives Donald Stepp two of the kilos of cocaine. Not a legitimate law enforcement operation.
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Taylor and Ward end up at the house. Hendrix and Jenkins end up writing a search warrant. The purpose of it was to provide cover. It contained falsities, according to Mr. Hendrix and Mr. Ward.

And they -- while Ward and Taylor were at the house, they had Ms. Holloway and the mother-in-law sitting on that couch. They were not free to leave. Ms. Holloway testified to that.

Mr. Stevenson testified that force had been applied to him before. And both of them testified as to exactly what they thought the police would do to them if they resisted. In both instances there was force and the threat of force.

Once Jenkins and Hendrix returned with the search warrant, they busted open the safe, Jenkins took out the money, threw \$100,000 back in the safe, took the money out, came back down.

And Taylor, Taylor created that fake re-enactment video that you saw. The purpose of that video was to try and convince -- try and convince a jury, someday, at a later date, that this was actually a legitimate operation. They contemplated at that moment that someday they might have to answer to this crime.

Mr. Stepp had a photograph which corroborates he was 1 2 there. Gondo and Rayam were intercepted on the mic discussing 3 this episode. Jenkins had told them that everybody got 20 g's, 4 5 \$20,000. You heard from Ward and Hendrix that after this --6 after they had cracked the safe, they made it to Taylor's 7 house. Taylor didn't have anyone living with him. It was the 8 perfect spot to split up the money. They went to Taylor's 9 Jenkins brought \$80,000 of the cash inside. The rest 10 house. 11 of it, the evidence shows, Jenkins left in his vehicle. With that \$80,000, Jenkins doled out \$20,000 to each 12 of the defendants. 13 Mr. Taylor, a short time after that, got a brand-new 14 15 deck on the back of his home. Mr. Hendrix told you that that 16 wasn't there beforehand. Mr. Hendrix told you that 17 Wayne Jenkins told Taylor who to use to get that deck. For Racketeering Act 8, the evidence shows that Taylor 18 agreed with Jenkins, Hendrix, and Ward to commit a robbery. 19 20 That agreement was out of the gate when Wayne Jenkins said, "This is a big one." 21

The evidence shows that these four men committed the robbery and are also quilty of a substantive offense.

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The defendants used force to restrain the Stevensons and the defendants took the property by threat of force with

Ms. Holloway, who testified that she did not consent. She remained at that property, just outside, while they were in the house stealing the money.

For this count, for this act, you were also asked to consider, under Count 3, whether this constituted a federal Hobbs Act robbery and extortion.

Judge Blake has instructed you that a federal robbery, a Hobbs Act robbery, is the unlawful taking or obtaining of personal property of another against his will by threatening or actually using force, violence, or fear of injury, immediately or in the future, to the person or the property. Again here, there is no consent. Ward, Hendrix, Stevenson, and Holloway all testified to that.

For Count 4, you are asked to find whether a possession of a firearm in furtherance of a crime of violence was committed. That does not mean the defendant must have brandished it. It does not require that he even took it out of his gun holster. It merely means that a firearm helped forward, advance, or promote the commission of the crime.

The evidence and testimony from Ward, Hendrix,

Stevenson, and Holloway is all clear. They all testified

Taylor had a gun. All officers had a gun. Not only did Taylor have a gun, Ward, Hendrix, and Jenkins all were armed as well.

The judge has instructed you that Hobbs Act robbery and Hobbs Act extortion in Count 3 are a crime of violence, so

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that if you find that the defendant did possess that firearm in furtherance of that crime, then you must also find him guilty of Count 4.
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This is how it would look on the verdict sheet,

Count 3 and Count 4. For Count 3 you'll be asked to determine

whether it's Hobbs Act robbery or Hobbs Act extortion. Again,

no consent here. It's a Hobbs Act robbery.

Count 4, you'll be asked to find him guilty as well.

In his opening statement Mr. Purpura said this was an honest investigation. Ask yourself if that's what the evidence actually showed in this case, that it was an honest investigation.

Rayam testified that his affidavit for the house was filled with lies. He lied about surveillance. He had an illegal tracker on the vehicle. He lied about a controlled purchase.

One of the surveillances that they did do, Rayam testified that Wayne Jenkins, during that surveillance, said he wish he had a mask so he could rob the guy. This was all leading up to the episode involving the Hamiltons.

Starting with the traffic stop just after the

Home Depot, immediately Mr. Hamilton was robbed. Rayam took
the money off of Mr. Hamilton, as he put him in handcuffs.

Mrs. Hamilton was there as well. They were both under the
threat of force. These were armed police officers.

Hersl was standing there as Rayam stuck the money, 1 \$3,000, in his vest. 2 They then took these two citizens in handcuffs to the 3 barn, an off-site facility, where they interrogated them. 4 5 Rayam and Gondo testified in this case. Rayam told you that 6 he, Jenkins, and Hersl interrogated Mr. Hamilton. Mr. Hamilton said, "I don't have any guns. I don't 7 have any drugs at my house. But I have cash." And he was 8 right, he had cash at his house. 9 At this moment, Rayam, Gondo, Jenkins, Hersl had 10 11 agreed that they would go there and rob him. Leading up to this event, Hersl's intent is 12 13 crystal-clear. Three weeks prior to this, he had already proposed to Rayam stealing money from a house at a 14 15 search warrant in the Southwest District. He and Rayam had a 16 discussion on the front porch; Rayam testified about that. 17 he said, "If you find any money, let's split it up." They agreed. Rayam testified that that was an agreement, they 18 19 agreed at that time. 20 Further evidence of this agreement is while they're at 21 the barn, who is sent up to Westminster? Not the guy you heard 22 about, John Clewell, the guy who didn't take the money.

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That is further evidence of their agreement to

Jenkins, Hersl, Rayam, Gondo, they go up to Westminster.

send the one quy who doesn't steal money out to another

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location.

commit a robbery.

They brought the Hamiltons with them. Mr. Hamilton was in handcuffs. They went into the house, searched the Hamiltons' home before Westminster, Carroll County, even arrived. Ask yourself why they would call another jurisdiction if they were going to go in and do a sneak-and-peek and look for money before they even arrived.

Hersl at first stayed outside with Mr. Hamilton.

Gondo, Rayam, Jenkins went inside the house. Hersl then came inside with Mr. Hamilton. Gondo and Rayam testified that Hersl, Gondo, and Rayam go upstairs to the Hamiltons' bedroom.

Hersl, Gondo, and Rayam find the money, the \$20,000, and the \$50,000, which is in the heat-sealed bundle. Gondo takes the cash, the \$20,000 cash, counts it right in front of Hersl. Why would you count this if Carroll County was coming to seize the evidence?

He then goes downstairs, Gondo and Rayam both go downstairs, leaving Hersl with the \$20,000 in cash. As he goes downstairs, Jenkins says (snaps fingers), "Take the money."

They go back upstairs, get what money is left; the evidence shows it was \$17,000. Hersl was in that room with the \$20,000. He took 3,000 of it.

They then take the money downstairs. Rayam has the money. Mr. Hamilton is ultimately interrogated by all four men. Hersl's standing there next to Jenkins, Gondo, Rayam.

Jenkins asks, "Do you have any big-time drug dealers that can be robbed? Who would you rob?" Words to that effect. Hersl's standing right there.

Gondo then testified that at some point Rayam comes walking out of the house as they're about to leave. He's sitting in the vehicle with Hersl. They both see Rayam with the money. He brings the money into the vehicle. Mr. Hersl's intent is not in dispute. It's crystal-clear what his intent was in this case.

And when you evaluate Mr. Hersl's intent, remember this: The evidence that you must consider is the evidence you heard from the witnesses who testified in this case.

Arguments of counsel -- myself, Mr. Purpura -- we can't claim to know what Mr. Hersl's intent was; but the evidence is crystal-clear from what you heard that he intended to take that money.

In opening, Mr. Purpura stood up and he said

Daniel Hersl was an embarrassment to the Baltimore City Police

Department. He embarrassed Baltimore City. And the evidence
shows that this man took money over and over and over and over and over and over again.

Ask yourself, then, why did the defense cross

Mr. Hamilton and ask him question after question after question
about whether he was a drug dealer? Does that matter?

Was Mr. Hersl entitled to rob this man because he was

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a drug dealer? It's to get you to think that Mr. Hamilton is beneath the law and does not deserve equal protection as everybody else.
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Mr. Hamilton sat there for two hours answering questions over and over again about his finances, what he did. He had two prior federal convictions.

When he got out, he was a scrapper. He was trying.

He was using the Manheim Auto Auction to buy cars, flip them,
sell them.

He has a stack of records -- they're in evidence, if you want to see them back in the jury room -- that show that he was engaged in cash sales. He was working, and he told you that from that stand.

After two hours of questioning, if that man was really a drug dealer, don't you think it would have been much easier for him to admit to that in this case than being subjected to the questioning?

And then this further underscores why the defense theory in this case is that these men are beneath the law.

Mr. Taylor then asked Mr. Hamilton a series of questions.

Mr. Taylor wasn't even present in Westminster when this occurred.

Over and over and over again they asked this man, Your background, how can you afford a house in Carroll County? And he testified that he put down \$17,000, he bought the house out

of foreclosure, and he had a mortgage, and that's what he testified to on the stand.

You can decide whether he was a drug dealer or not.

But I submit to you, it's irrelevant to the core issues in this case.

In Racketeering Act 10, this is the verdict sheet.

The evidence shows that Daniel Hersl, Wayne Jenkins,

Momodu Gondo, Jemell Rayam conspired to rob this man.

Furthermore, Daniel Hersl robbed this man specifically when he took the \$3,000 out of that upstairs bedroom. That's corroborated by the wiretap call between Gondo and Rayam, and you heard that evidence in this case.

You'll also be asked to consider Count 5, federal
Hobbs Act robbery and extortion. Mr. Hamilton testified he did
not consent. Rayam testified he did not consent. And Gondo
testified that Hamilton did not consent. Therefore, based on
the judge's instructions, you should find Count 5 guilty.

And in Count 6, the judge has instructed you that if you find the defendant guilty of Count 5 that that constitutes a crime of violence, and the first element is met.

The evidence clearly shows that Mr. Hersl possessed a firearm in furtherance of the crime. The firearm helped forward, advance, or promote the commission of the crime.

Mr. Hamilton testified what he thought was going to happen to him during this event. All four officers were armed.

Indeed, the evidence shows that that firearm helped facilitate that crime.

August 8th, 2016, Mr. Armstrong was leaving the storage facility. Wayne Jenkins and everyone else stopped -- stopped him, tried to stop him. He took off. He threw cocaine out the window. He testified to that on the stand and he testified that he had 2 kilograms of cocaine, approximately, back in his storage facility.

He testified that there was a jail call in which he was recorded, and the FBI approached him.

The amount reported in this case, according to

Mr. Armstrong and according to the evidence that you have, is

2 grams of cocaine. 2 grams compared to 2 kilograms of

cocaine. And only \$2,833. Rayam testified that Hersl took the

money out of that man's glove box, \$8,000.

Mr. Rayam testified that Mr. Hersl did not put it into an evidence bag (indicating). His intent was clear from that moment when he's brought Rayam to 7-Eleven and Archbishop Curley and they split up the money right then and there.

But beyond that, the evidence shows that Mr. Hersl also benefited from Wayne Jenkins' friend Donald Stepp.

Jenkins contacted this man, who's not a police officer, to come in and rob the storage facility. Donald Stepp testified that Wayne Jenkins told him that it was Danny's score,

Daniel Hersl's score.

When Stepp then later took those two -- that cocaine, approximately 3 quarters of a kilogram of cocaine, he then sold it.

He sold those drugs, returned a portion of the proceeds to Jenkins. Jenkins told Donald Stepp that he had to return it to Daniel Hersl because it was Daniel Hersl's score.

And he further said that Daniel Hersl was upset because Donald Stepp missed 4 ounces of cocaine, 4 ounces that he could have sold.

Daniel Hersl will attempt to distance himself as much as possible from Donald Stepp. This man is an embarrassment to the police department. He wasn't even a police officer and he's seen here in a police vest inside that office.

He gave illegal trackers, personal tracker, to

Daniel Hersl when Wayne Jenkins and Daniel Hersl drove up next

to him and threw one in his vehicle, and that was for what

Donald Stepp testified to was another target.

So in Racketeering Act 11, you're asked to consider whether there was a conspiracy to commit a robbery. There was certainly an agreement. Him and Rayam had already committed the Hamilton robbery. They'd attempted to commit a robbery in the Southwest District.

Hersl and Rayam split up the money. At a minimum, that constitutes the deprivation of property.

In addition to that, there's also evidence of cocaine that went missing as well. That is proved as well as the substantive act.

Racketeering Act 12, Sergio Summerville. This episode began when Jenkins and Hersl went into the -- Mr. Thompson's maintenance shed, asked him to see the cameras, and Jenkins and Hersl said to him, standing side by side, "You look like someone that needs to get robbed." Robbed. Notice he said "robbed" and didn't say, "You look like someone that needs to be the victim of a theft." That's different.

The evidence shows that Rayam and Taylor went back into Mr. Summerville's unit. He had cash back in the unit.

Mr. Summerville testified that his money was taken. Mr. Rayam testified that he took the money, gave it to Mr. Taylor. You saw video showing that these men were there. The men were armed.

Mr. Rayam is also picked up on the microphone recording admitting that he had to give Taylor some of the money after he taxed Mr. Summerville a little bit. This was a term that was frequently used by the members of this enterprise.

And at the end of this, Mr. Summerville testified that Daniel Hersl gave him an elbow, used physical force during this episode.

For Racketeering Act 12, you should find that there

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was a conspiracy. It's been proved. Rayam and Taylor had an
 1
     agreement to take that money in that man's unit; they split it
 2
         They committed a robbery as well. Force was applied.
 3
     up.
    Mr. Summerville was restrained. And he did not consent.
 4
 5
     testified he did not consent.
              I'm going to cover some of the overtime fraud.
 6
                                                              I know
     you've heard a lot of testimony about that in this case, so
 7
     I'll be relatively brief.
 8
              The judge has instructed you on the elements.
 9
             As far as the interstate wire, you heard from
10
11
    Mr. Matz. He flew into Baltimore all the way from Atlanta,
     Georgia. Testified that ADP's data center is in Sioux Falls,
12
     South Dakota. That element is met.
13
              So now you're asked to consider whether there was a
14
15
     scheme to defraud or to obtain money by materially false
    pretenses, representations, or promise.
16
              The evidence shows that these men were not working
17
18
     hard to rid the city of guns. They were hardly working.
              When you look at the receipts that
19
20
     Special Agent Jensen testified about from September and
21
     October -- and you'll remember Mr. Wise filling out a calendar
22
     on the doc cam -- Daniel Hersl hardly ever worked, but he got
23
    paid for it over and over and over again.
              In 2015 alone, Daniel Hersl's overtime was more than
24
25
    his salary. Hersl and Taylor both made six-figure salaries.
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The evidence in this case, you heard from the co-defendants,
 1
     Ward, Hendrix, Gondo, Rayam, they did not work nearly the
 2
     amount of hours that these men said they worked.
 3
              You saw how these guys were willing to do whatever it
 4
 5
     took to lie, cheat, or steal over and over again.
              And up until we played this recording in court, you
 6
 7
     heard repeatedly from Mr. Purpura, through his questioning,
     through his opening statement arguing that Daniel Hersl was
 8
     doing everything he could to rid the streets of Baltimore of
 9
10
     guns and do his job.
11
              Ask yourself if that's what this recording showed.
     When Taylor said, "That dude unconscious. He ain't sayin'
12
     shit, "this is after a high-speed wreck that occurred right
13
     after the cops chased them.
14
              Daniel Hersl, he's the one that says, "We should
15
16
     fraudulently stop the slips at 10:30 before that happened."
17
              Daniel Hersl then said, "Hey, I was in this car just
     drivin' home, " and you heard that laugh.
18
              "Hey, you know, listen, when he got in the accident,
19
20
     they're not going to look at that. He was two blocks away. I
     know, all right." Ask yourself if that is the good cop that
21
     Mr. Purpura held him out to be in the opening.
22
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14, 15, 17, 18, 20, 21, and 22, involving Hersl and

So in the time and attendance racketeering acts that

you are to consider, I will go through these rather quickly.

23

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Taylor, you would think, after hearing the testimony and the cross-examination that we have a stack of cases involving

G days or slash days that we're asking you to consider. That seemed to be a focal point of the defense in this case.

Some other members of the law -- of the Baltimore

Police Department evidently said, yeah, we'll give out a G day

here and there, a slash day. Lieutenant Friel said that was

not an authorized practice.

But that's not what's charged in this case. There's not a single G day or slash day that's charged that you're being asked to consider.

We have a stack of the overtime slips, and we'll make them available to defense counsel in their closings. There's not a single G day. A G day is a day off the following day or days later for a gun arrest, and the supervisor gave that even though it wasn't authorized.

What's charged in this case is blatant overtime fraud; Mr. Hersl, Mr. Taylor taking credit for gun arrests that they did not even participate in and also extending their overtime slips hours later into the evening and saying that they came in to work at 8:00 a.m., when, in fact, they did not.

For each of the racketeering acts, you'll be asked to find whether they're proved or not proved.

I'll give you a couple of examples.

For Racketeering Act 14, this was the raid on

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East Chase Street involving Milton Miller. Ward and Gondo
 1
     testified they were present for the raid. They both testified
 2
    Hersl was not.
 3
              Special Agent Jensen testified that police reports
 4
 5
     were reviewed. Hersl was not there. Hersl put in an overtime
 6
     slip claiming to have been there. And there was a wire to ADP
 7
     for this time and attendance period.
              Here is Mr. Hersl's overtime slip. That's PP-1A.
 8
     This act is proved.
 9
              July 14th, there was an arrest at Grindon Avenue.
10
11
     Jenkins, Ward, Hendrix, Taylor made the arrest. The incident
     report does not list Hersl. Ward testified that Hersl was not
12
13
     there.
              Again, this is Hersl taking credit for someone else's
14
15
     qun arrest, time that he did not even work that day.
16
              Special Agent Jensen testified about the corroborative
17
     evidence, the cell site records, other information about this
18
     episode.
              Turning to Racketeering Act 15, that's the
19
20
    Grindon Avenue time slip.
              Racketeering Act 17, Taylor was also not present for
21
     this time period. Ward testified to that as well.
22
    Hendrix. Neither of them worked for that arrest.
23
              But if you look at Taylor's slip, he put in the exact
24
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same time as what Ward, Gondo, and Hendrix claimed.

25

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Now, Taylor was there initially for part of the time,
 1
    but Ward testified that they ended early and that the rest of
 2
     this time was fraudulent that they put on their time and
 3
     attendance slips.
 4
 5
              Next, Racketeering Acts 18 and 20, Rayam testified,
     "Just y'all 2." Taylor's cell phone is in New York City.
 6
 7
    Hersl was not there. Gondo testified to that. That element's
    proved.
 8
              Racketeering Acts 21 and 22, you have the evidence for
 9
     all the racketeering acts. And to be clear, there's multiple
10
11
     overtime slips within each act for you to consider, and you've
     heard testimony about all those. I'm just highlighting a
12
13
     couple right now.
              For 21 and 22, Taylor was in the Dominican Republic.
14
15
    He got paid for all -- for those -- for some of those days
16
     while he was in the Dominican Republic.
17
              Hersl claimed to have worked 8:00 to 4:00, and he did
    not.
18
              Each of these acts are proved. And when you return --
19
    we're still in Count 2. When you go back, remember, Elements
20
     1, 2, 3, and 5, we went through those right out of the gate.
21
     We're back now on Element 4. And if you find -- the
22
23
     United States has the burden of establishing that each
     defendant committed two of these acts.
24
25
              So, for example, if Defendant Hersl, if you found that
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he committed two overtime and time and attendance fraud acts,
then he should be found guilty of Count 2. Same with

Defendant Taylor. But the evidence shows that they committed
each and every one of these robberies, extortions, and overtime
fraud acts.

So on the verdict sheet you'll be asked to render a verdict of guilty based on the evidence you've heard in this case.

Turning to the racketeering conspiracy, I won't go over this as lengthy as I did for Count 2, because it involves many of the same racketeering acts that we already discussed here today.

The first element was that there was an agreement among two or more persons to participate in an enterprise that would affect interstate commerce.

Again, a conspiracy is an agreement that could be entered into informally. It's not a written agreement.

The judge has instructed you that it can be an explicit or implicit understanding. And through the testimony of Rayam, Gondo, Ward, and Hendrix, they've all established that these two men had that agreement in this case.

The other elements as well, the defendant knowingly and willfully became a member of that agreement and that the defendant or another member of the conspiracy -- that's key, the defendant or another member of the conspiracy -- agreed to

commit at least two racketeering acts.

Here on this page you'll have an opportunity to find

guilty or not guilty and then go through each of the acts.

It can be an act committed by a co-conspirator. For example, if you find Ward admitted to Raytawn Benjamin, that can be evidence of the conspiracy against Taylor and Hersl as well.

Now, in every case, just remember, money, when it's put aside, was put aside always for the co-conspirators in the case; that's what the evidence shows.

John Clewell, he never got a share of the money.

James Kostoplis never got a share of the money.

And not in every example, but there were times when some members of this conspiracy would steal. There were other times when other members would steal. And you'll see in a moment that it's a web, and it all flows through Wayne Jenkins.

Daniel Hersl's pattern of racketeering and conspiracy existed and predated Wayne Jenkins.

You heard a lot about Wayne Jenkins in this trial.

The defense and the Government, I think, can agree that he's committed some very serious crimes.

But the evidence shows that Daniel Hersl engaged in a pattern of racketeering even before he merged with Wayne Jenkins' unit.

The extortion of Jimmie Griffin, the robbery of

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Herbert Tate, the robbery of Antonio Santiful, those occurred before Wayne Jenkins and Daniel Hersl joined up.
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And right after he joined up, that's when you had the attempted robbery in the Southwest District that Rayam testified about; the Hamiltons, the overtime fraud, Dennis Armstrong, the Kostoplis proposal that the last witness testified about in this case; and the Twisted Tea robbery proposal. I want to go over that briefly.

In questioning Mr. Kostoplis, you'll remember Mr. Purpura asked if Daniel Hersl got transferred out of the unit at the same time, right after this event.

But remember, Daniel Hersl came back to hear
Wayne Jenkins on his proposal to rob Oreese Stevenson. Ward
testified about this in the first week of this trial.

Daniel Hersl was part of the team. He and Jenkins met up with Taylor and Ward. Ward testified that they were summoned to a parking complex. Hersl and Jenkins were drinking alcohol, Twisted Teas. This was at the time that Hersl was in Shootings, had just been assigned out of the unit.

Jenkins proposed going back and hitting

Oreese Stevenson's house. Ward thought this meant a

search warrant first, but then Jenkins explained he wanted to

kick the door and steal money from the home.

Hersl and Taylor were present for this proposal. Ward is the only one who said no.

The evidence shows that Hersl remained part of the team even after he left Citywide -- left for Citywide Shootings in the spring of 2017.

Marcus Taylor, his pattern of racketeering also predates the conspiracy. He robbed Shawn Whiting. You heard about the robbery at Edmondson and Fremont, the false affidavit and charges against Pedro Jones.

And then once he joined Jenkins' unit, you heard about the robbery at Belvedere Towers where Ward told you that he and Jenkins and Taylor went and stole the marijuana. Jenkins, we later learned, gave that to Donald Stepp, the same bag that Ward had seen, Donald Stepp identified that bag on the stand that was brought to his house with the marijuana. And both Taylor and Ward got \$5,000 of cash from that episode. This is further evidence of the pattern of racketeering and the conspiracy.

You also heard about an attempted robbery in Washington, D.C., in PG County. Taylor told Ward, Hendrix, Gondo about the time that Taylor and Jenkins traveled down to the D.C. area to rob someone.

Taylor agreed. Jenkins told Taylor to get out and hit the guy and take the money. Taylor became nervous because he was worried about hitting the guy -- not because he was worried about hitting the guy, but because another vehicle appeared nearby.

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Lo and behold, that was Special Agent Todd Edwards,
 1
     who was conducting a legitimate investigation, thwarted their
 2
              But this is further evidence that Taylor was part of
 3
 4
     the Wayne Jenkins team.
 5
              So in short, this is another slide that shows that
     each of these sets of individuals all committed crimes before
 6
 7
     they merged into the unit with Wayne Jenkins.
              Once they were together, each of these lines
 8
     represents criminal activity agreed to or conducted by and
 9
10
     amongst them.
              You can see that Daniel Hersl committed crimes or
11
     agreed to commit crimes with every other person in this unit,
12
13
     specifically Rayam, Gondo, Jenkins, Taylor, Ward. Ward was
     there even for the Twisted Tea proposal. He did not commit a
14
15
     crime with Evodio Hendrix separate and apart from being
16
     involved in the same racketeering conspiracy.
              And you can see how not all members of the unit made
17
     out with money in every single case.
18
              The robbery of Oreese Stevenson involved four members.
19
20
              The robbery of Belvedere Towers involved Taylor and
21
     two others.
              The robbery of Sergio Summerville involved Taylor and
22
23
     Rayam.
              The robbery of the Hamiltons involved Jenkins, Gondo,
24
25
     Hersl, Rayam.
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The robbery of Dennis Armstrong involved Jenkins, Hersl, and Rayam.

And this is the Twisted Tea proposal.

As we got near the end of this case, this trial, the defense, a strategy appeared to be to let it burn. They were attacking other officers in the department. They were eliciting testimony about other officers who committed crimes in the Baltimore Police Department.

Special Agent Jensen took the stand, and she told you the FBI's work is ongoing. It's still going on.

But the strategy to say that others in the department are engaged in crimes and criminal activity somehow condones what these two men did is not the law. These two men are not above the law, just like any other officer in the department who commits a crime is not above the law.

And on that slide Mr. Purpura asked Mr. Rayam, "Why should this jury believe you today?" That was the question he asked.

And Rayam told you, he looked -- there was that moment, he looked at the jury and he told you exactly why he was there, and he said, "I'm not blaming Wayne for being the supervisor. I blame myself, because at the end of the day, we all had that badge, the Baltimore City Police Department. So whether you were a sergeant, a lieutenant, a captain, we still had that badge. I broke it, and I'm saying what I did was

wronq."

Rayam admitted to his mistakes.

Gondo, Ward, Hendrix, they all came in here. And the reason that they were called as witnesses was so that you could get that inside look in the Baltimore Police Department. This wasn't just a case where witnesses were called who had their money taken from them. Every single case was corroborated by either witnesses, documents, or other evidence that you saw and heard.

In this case the defense elicited testimony about what the defense termed profiling, and they said it's just a tactic.

There was some talk about door pops, targeting dope boy cars, fabricating tint violations, seat belt violations, targeting citizens over 18 years who -- 18 years old who carried a backpack. Carrying around BB guns to plant on people.

In opening the United States told you this isn't a case about aggressive policing. This is a case about greed, and that's what this case remains.

But to the extent the defense has brought out this testimony, you can see that profiling was another tactic, but it was a tactic used to rob the citizens that you heard from in this case. It was a tactic employed by this conspiracy, these co-conspirators, these two defendants to rob and victimize the people of this city.

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So in sum, I want to thank you for your attention.
I'm going to sit down in a minute. Defense counsel will have a
chance to speak with you. Mr. Wise will have a chance to speak
with you in rebuttal.
         What the defendants have done tarnished their badges.
        And you saw officer after officer come in here in this
case -- officers on this screen -- seizing evidence, submitting
evidence, faithfully following their oath, their badge.
         Being a law enforcement officer meant something to
these people. It didn't mean that to the defendants.
         This case isn't a case against all police. It's a
case against a group of criminals that happened to hide behind
a badge.
         The victims of the defendants' crimes in this case
thought no one would ever listen to them. They thought, "It's
my word against theirs." That's what Mr. Whiting said.
                                                        "Why
would anybody ever listen to me?" Mr. Whiting was a drug
dealer. He didn't believe you would listen, but you did.
         Over two weeks these witnesses came in here, one by
one, they took an oath to tell the truth, and they spoke to
you.
        And in a little bit you will have a chance to speak as
well.
      That's what a verdict means, to speak the truth.
         And the truth you should speak is the only inescapable
```

truth in this case: No man is above the law. No man is

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beneath the law.
 1
              The defendants did wrong, they committed crimes, and
 2
     as a result, the United States asks that you return the only
 3
     verdict supported by the evidence, and that's quilty as to all
 4
     counts and both defendants.
 5
              THE COURT:
                          Thank you, Mr. Hines.
 6
 7
              Can I see counsel at the bench for just a minute.
          (Bench conference on the record:
 8
              THE COURT: The jury has indicated to Ms. Moyé that
 9
     they can stay until 5:30 or 5:45 today. It may work. I don't
10
11
    know.
              Are you ready to go ahead with yours, Mr. Purpura?
12
              MR. PURPURA: I am.
13
14
              THE COURT: All right.
              MR. PURPURA: Actually, I need a few minutes to get
15
16
     the laptop up. I need about five minutes. I'm sorry.
    need a little break.
17
              THE COURT: Okay. All right.
18
              MR. PURPURA: I'm ready, but I need a break.
19
              THE COURT: Okay. We'll take a short break.
20
              On the verdict sheet -- we don't need it right now --
21
    but did you ever do one that corrected the misspelling?
22
23
                         I did.
                                 I didn't know Ms. Childs wasn't in.
              MR. WISE:
     I e-mailed it to her last evening when I got back to my office.
24
     I actually got a paper copy at lunch. I couldn't get an
25
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electronic copy. So I have one for Your Honor and I can
 1
     e-mail --
 2
              THE COURT: If you give me the paper copy, then I can
 3
     make copies.
 4
 5
              MR. WISE: Okay. I do have that.
              THE COURT:
                         Okay. Great.)
 6
          (Bench conference concluded.)
 7
              THE COURT: All right. Ladies and gentlemen, we're
 8
     going to take a short break before we hear from defense.
 9
10
          (Jury left the courtroom at 3:20 p.m.)
11
          (Recess taken.)
              THE COURT: All right. You can be seated, please.
12
13
              Ready for the jury?
              MR. WISE: Yes, Your Honor.
14
15
              THE COURT:
                          Okay.
16
              MR. PURPURA: Judge, I think about 45 minutes, tops.
17
              THE COURT:
                          Okay.
18
              MR. PURPURA: 46.
19
          (Jury entered the courtroom at 3:36 p.m.)
20
              THE COURT: All right. You can all be seated.
21
              Mr. Purpura.
22
              MR. PURPURA: Thank you, Your Honor.
23
              This case is not -- not about opening statements, what
     I said in opening statements. And it's certainly not what I
24
25
     say in closing argument and/or what the Government says in
```

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closing argument. And it's certainly not about PowerPoint ability, 'cause I would lose that quickly.

It's really about the evidence. It is all about the evidence. It's about the witnesses that you heard and about your God-given ability to believe or not believe what they had to say.

It's about 12 people coming together and looking at the evidence, and I know you will, and going over each and every count, regardless what I say, regardless what Mr. Hines says, regardless what Mr. Wise says in rebuttal. You are our jury, and I am absolutely, completely confident that you will do that on each and every overt act, Racketeering Act and count in this case.

And at that point, once you come to that decision, whatever that decision is, it's a just decision and it's a right decision.

The question -- in this particular case, there's more than one question. But the main question, as I framed it in the opening statement for Dan Hersl, is whether, in fact, his actions amounted to a robbery.

And you will have the Court's written jury instructions. You will have them in front of you. And I suggest on Page 28 you're going to see what the definition of "Maryland robbery" is. And that's the wrongful taking and carrying away -- and the point again is the wrongful taking,

wrongful taking and carrying away of property from the person against his will by actual or threatened force or violence.

And extortion is obtaining the property from another with consent, again, at the point of the taking induced by actual threatened force or fear.

And then there's what I'm suggesting happened at least on two instances in this case, which we'll go into, is a theft.

And there's two parts to theft.

One is taking and carrying away the property of another without authority and with the intent of depriving the owner of the property, and that is going to be in the Armstrong situation.

And the second is possession of stolen property, that the defendant knew the property was stolen with the intent to deprive the owner of the property, and that is going to be in the Hamilton situation.

And I'll get into that in greater detail in a short period of time.

What's important in this particular case is to first look at the dynamics to see, in fact, who are the parties and who Dan Hersl was associated with in this particular case and before that.

We know that Dan Hersl joined the GTTF sometime in January 2016. It might have been late December of 2015. We know the composition of the GTTF at that time. It was

Sergeant Allers, Gondo, and Rayam at that particular time.

And we also know, when you look at the dynamics, that Gondo and Rayam were partnered up well back, back in 2010 and then again in 2012, '13, and '14. So they're together for a lengthy period of time.

What we do know is that when Dan Hersl's on the GTTF, there was a warrant which was executed -- the first warrant was executed on McKean Street. And that was a search which involved, if you remember, that Detective Rayam and Gondo at that time went into McKean Street. And there was a gentleman who's upstairs in the upstairs bedroom, as we described, and he's counting a large amount of money.

And at that point Rayam seizes the money. There's a gun seized as well at that point. And the gun's turned in by Allers, and it's turned in by at that time Detective Hersl.

The money is split, because money was taken at McKean Street. And the money was split, again, within the dynamics of the GTTF at that time. It was split between Allers, Gondo, and Rayam. But Hersl was excluded from all the illegal activity at that time. That's important, 'cause that's the beginning of the GTTF.

There's another search warrant executed by the same group of people, and they call it -- it's called a parallel street to North Avenue. So somewhere near North Avenue.

At that time, if you recall, Rayam said he grabbed --

```
put his fingers up, a stack of money. I grabbed a stack of
 1
    money like that (indicating). So no one else could see him,
 2
    but he grabbed a stack of money.
 3
              And then he even talks to Sergeant Allers. He says,
 4
 5
     "Should I give any money to Hersl?"
              And Allers -- Allers said, "No. Don't trust him."
 6
    Didn't trust Hersl.
 7
              And why didn't he trust Hersl? Because while he's on
 8
     the GTTF, Hersl is doing nothing wrong up to that point. Don't
 9
10
     trust him.
11
              So the dynamic at that time from January of 2016 right
     until June, mid June of 2016, was Allers, Gondo, and Rayam.
12
     Excluded who? Excluded Hersl and excluded John Clewell, and
13
     that's what the evidence showed.
14
15
              And one more factor which is important -- and Rayam
16
     actually admitted this: There was a phone conversation,
17
    because there's a wiretap up there. May 27th, 2016, there's a
18
     phone call between Rayam and Gondo.
              And in that phone conversation, either Rayam or Gondo
19
20
     says to each other, Danny Boy just got called down to -- it was
21
     at that time IID, Internal Investigation Division. He may be
22
     an informant, yo.
23
              So May 27th, 2016, Dan Hersl gets called down to the
     internal investigation. And Rayam and Gondo are concerned
24
25
     about their own safety because Dan Hersl may want to talk on
```

them and say something about them, the very thing that 1 Sergeant Allers was concerned with. And that's why we keep 2 whatever we're doing away from him. 3 And then the dynamic in the middle of June of 2016 in 4 5 the GTTF changes. Let's see how it changes. We know that in 2015 that Jenkins, Taylor, Rayam, 6 7 Hendrix were part of the SES squad. And we know what was going on, at least what allegedly went on, during that period of time 8 with some of the members, 'cause that was part of the 9 testimony. 10 11 And all during that time, whatever was going on, Dan Hersl, again, was not part of that dynamic, not part of 12 that squad, had nothing to do with it. 13 And then we know that Jenkins gets transferred. 14 15 Sergeant Jenkins gets transferred. He's now the sergeant in charge of GTTF in mid-June of 2016. 16 17 And who does he bring with him immediately to GTTF? He brings Taylor, Rayam, and Hendrix. Again, the dynamics are 18 They were together before; they're together now, 19 the same. just the way that Gondo and Rayam were together. 20 And what does Rayam tell you? That from the rest of 21 2017, what's the dynamics in the squad itself? 22 23 The dynamics in the squad itself is the lead car would be Jenkins; Taylor's in the passenger side because he gets 24 25 somewhat car sick, can't sit in the back; you have Rayam and

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Hendrix in the back -- that's what they testified to; and Ward said the same thing; Hendrix said the same thing.
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And then the follow car is Rayam and Gondo. Again, the dynamic is: No Dan Hersl in that group. These are teams which worked together before, and Dan Hersl was not part of that dynamic before.

In fact, even in the Hamilton investigation, if you recall, who's Dan Hersl teamed up with? He's teamed up with on surveillance John Clewell, not Rayam, not Gondo, not Hendrix, not anybody else. John Clewell, 'cause that's who he was partnered up with during that period of time during the GTTF.

Now, the Government called as their last witness
Officer Kostoplis. And Mr. Hines in the very beginning talked about Officer Kostoplis.

And before Gondo left the witness stand, I asked Gondo in particular -- 'cause I knew that Officer Kostoplis was coming up as a witness -- I asked him, Did everyone get extra overtime? I said, like Clewell and like Kostoplis, I mean, for work G days or days they were not there?

And Gondo said, Everybody, everybody at GTTF, including them.

And so one of the first questions I had to ask

Officer Kostoplis was: Did you receive any overtime pay which
was not appropriate?

And, of course, he said "no."

```
But, you know, aside from that, aside from his
 1
     credibility at that point, let's look to see what he really
 2
     said.
 3
              What he said is sometime in 2017, Jenkins comes into
 4
 5
     the squad room with other members there, so there's lots of
 6
     other people there.
              Jenkins tells Kostoplis and Hersl, Come with me.
 7
     the sergeant. That's what he does.
 8
              They get in the van and they go with him. And then
 9
     what happens? The van stops.
10
11
              Jenkins tells Kostoplis and, as Kostoplis says, tells
    Hersl, Put your cell phone down. Put your police radio down.
12
              And Kostoplis said he did, and then he believed that
13
    Hersl did as well.
14
15
              And then Sergeant Jenkins, not Hersl, talks about:
16
     What if we targeted someone for robbery?
17
              Kostoplis said what he said, that it's a bad idea.
    And he explained that it was a bad idea. And as he said, Hersl
18
19
     also said that's a bad idea as well.
20
              At that point Kostoplis tells you honestly he
    believes -- I think nothing of it. I don't report it. I don't
21
22
     do a thing. Not important. Nothing.
23
              What he thinks is significant is that Jenkins says to
    him, Maybe you should transfer out or how about a transfer out?
24
25
              But I guess he didn't know that Hersl already
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transferred out before Kostoplis left. Soon after this incident that Kostoplis talks about, Hersl's out of the squad and he's on Citywide Shooting. It's nothing.

Just before Agent Kostoplis testified -- excuse me,

Officer Kostoplis testified, Agent Jensen testified.

Agent Jensen was called to the witness stand primarily to talk about Hersl and his days between September 16th and

October 16th. They go through the receipts and go through the cell towers.

I asked her different questions. I wanted to know: What's the scope of the investigation? What has the FBI, with all their resources, done in this particular case?

She said the FBI was involved since 2015. She said there was a wire intercept on two of Gondo's lines -- that's his cell phones, from April 2016 through August of 2016, up 24/7.

So there's a wiretap on Gondo's line 24/7, being monitored by special agents (indicating) with all the best of the wiretap going to the Government (indicating) to be used in a case like this, a case involving extortion and robbery on Gondo, one of the lead defendant's phone.

Was there one phone call in four months during this active time of the GTTF that the Government played [sic] any way implicated Danny Hersl in any of the extortions or robberies, past or present? And the answer is "no."

Agent Jensen also told you that there was a bug -which is a wire -- which is placed in Gondo's police vehicle.

The bug was placed sometime in August, mid-August of 2016,
right on through the arrest date, March 1st of 2017. That is
approximately six months.

So anytime that Gondo, Hersl, Rayam, anybody is in that police vehicle over a six-month period of time, FBI agents are recording and the Government gets the best of those recordings.

Was there one single recording over that six-month time which in any way touched on the extortion or the robbery which is charged in this particular case?

And the answer is "no."

What we did hear was the recording about the accident, which Mr. Hines again went into today. It's ugly. What was going on that particular day, they were following a subject. It was raining. Jenkins was going too fast. Subject gets in an accident.

Should they have rendered aid?

Absolutely, they should have rendered aid. Bad police protocol. Wrong for the officers to do. They stood back and waited till other aid came. And that's been recorded, and that's what the Government played.

But nothing which advances the ball on extortion and/or robbery.

1 I asked the agent: How about search warrants, March 1st, 2017? 2 And the Government suggests, you know, maybe 3 search warrants aren't that important because everyone is 4 5 forewarned. What the evidence showed, that the only person who was 6 really forewarned was Gondo about some narcotics investigation. 7 Not Hersl. 8 When he turned himself in on March 1st, 2017, he was 9 reporting to duty as directed. He had absolutely no idea that 10 11 he was going to be arrested. So what the Government does, they have a 12 13 search warrant and then they search his house. And in his house, there is absolutely no money found. There is no 14 15 jewelry. There is no Rolexes. There's no watches. 16 nothing of value whatsoever which would in any way push the 17 ball forward on extortion and the robbery as the Government's 18 suggesting. His police vehicle was also searched. And unlike 19 20 Gondo's vehicle, which had a quantity of narcotics in the 21 vehicle, there was nothing in his police vehicle. 22 All the repairs to his house -- we found out through 23 Agent Jensen, all the repairs to his house were on his credit card, not cash payments. 24

One of the questions by a juror was about vehicles and

25

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loans and payments. As we asked the detective, she saw the
 1
     loan documents right there. Payments were being made. No cash
 2
    being paid on that vehicle. It was just purchased, and it's
 3
     been repossessed.
 4
 5
              Bank accounts, was Mr. Hersl's bank account searched
     to see if there's any cash deposits going in which would in any
 6
 7
     way advance the ball?
              And the answer through Agent Jensen is: Yes, bank
 8
     accounts were searched.
 9
              And the answer is: No cash deposits, nothing out of
10
11
     the unusual. Nothing whatsoever.
              And, again, a question by one of you jurors as to how
12
13
     about family, so we asked that question. Actually,
     Agent Jensen said, Yes, there was an account in the name of
14
    both Danny Hersl and Dorothy, his mother, a joint account.
15
16
     that account was checked as well. Nothing unusual in that
17
     account. No cash deposits whatsoever.
              Any evidence of travel outside of the country? Only
18
     evidence of travel they had was to Delaware and Ocean City.
19
20
              After Dan Hersl's arrested, there's two cell phones
     which were seized, one on him, an iPhone, and one in his house.
21
22
     And as Agent Jensen said, there's a plethora of information on
23
     those cell phones.
              And as she also said, Dan Hersl gave consent,
24
```

voluntary consent, to search those cell phones. And those

25

1 cell phones were searched.

Nothing is found on those cell phones. Nothing. Nothing is found on those cell phones. Nothing. Note text messages between Hersl, Gondo, Rayam, Hendrix,

Jendrix [sic], anybody. No photographs, nothing. If there were, we would have received them. Nothing. Zero.

And then a simple question about surveillance, and the answer is: We just couldn't do it. So there's no surveillance whatsoever either on any of these particular cases.

And I'll just briefly just segue for a second to overtime.

One of the most telling moments, interesting moments in the trial, at least to me, was when the Government called Lieutenant Friel. You saw his picture. I don't have pictures, I'm sorry, of all the witnesses.

Lieutenant Friel was only called because he's from human resources. And the only purpose of his testimony -- remember, he was the gentleman who came, looked heavier set, came in and sat right there. And the only purpose the Government calls him is to establish that Danny Hersl and Mr. Taylor were police officers. That's it.

Well, I had to ask him more questions, 'cause that's my job. And that's what I did. I wanted to ask him about overtime just right out of the blue. I don't know. I've never talked to him before. And what is he going to say?

When I asked him about overtime when he was back as a

sergeant on the Eastern District, if you recall, his mouth kind of just stood open. His jaw dropped for a second. And you could just see him thinking: What am I going to say?

And you know what he said? He said the truth. He said, Yes. Back when I was there, Eastern District, we gave slash days. We gave G days. Slash days for guns, back-end day. We gave G days. We gave 'em for overtime. It's a common practice. It's not right, but it's done.

As I told you in the opening, if it is fraud, the fraud was rampant. It was rampant amongst the aggressive police squads in Baltimore City from early 2000 right on through March 1st of 2017.

And right up the chain of command, it was acknowledged with a wink and a nod. But let's just set that aside just for a second. Set it aside.

On the specific racketeering acts, you're going to have -- and it's going to be on Page 8. And there's four specific racketeering acts involving overtime fraud. And you saw them on the PowerPoint, but this is the page -- you're going to have it on your verdict sheet (indicating).

And then you remember that Special Agent Jensen did the cell towers. And she was able to show on those cell towers in September to mid-March where Dan Hersl's cell phone was, outside of Baltimore on all those days.

And you'll remember Mr. Wise made a calendar of all

```
those days, because they could trace where his cell phone was.
 1
    And maybe we'll see that calendar again in rebuttal.
 2
              But what that calendar doesn't have is any of the
 3
     dates and the time periods where the overtime fraud is alleged
 4
 5
     that you have to find beyond a reasonable doubt that it's
 6
    proven.
 7
              And there's a reason for that. Special Agent Jensen,
     she had those cell phone records for these dates; she said she
 8
     did.
 9
              If Dan Hersl's phone was in Harford County, Bel Air,
10
11
    Anne Arundel County, anywhere but Baltimore City, you would
    have seen it; there'd be a calendar; and it'd be in evidence.
12
13
              On these dates. You got to assume at this point that
     that phone is right in Baltimore City where it should be
14
15
    because he's working. And that's not saying that there weren't
16
     slash days, overtime days, or days which he shouldn't receive
    money. But on these days, if they had it, they'd have given it
17
     to you.
18
              All four, all four cooperators said they filled out OT
19
20
     slips for Hersl, all four, in their own handwriting.
21
              I asked each and every one of them: Did Government
     counsel ever show you those overtime slips? You could identify
22
23
     your own handwriting, can't you?
              And the answer is "yes."
24
25
              Did they ever show you one?
```

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"No."
 1
              Did they ever produce one to you in Hendrix'
 2
     handwriting for Hersl, Ward's handwriting for Hersl, Gondo's
 3
     handwriting for Hersl, Rayam's handwriting for Hersl?
 4
 5
              And the answer is "no."
              You know why? Not because they don't work. You see
 6
 7
     how hard they work. That PowerPoint was a thing of beauty.
     That's hard work.
 8
              You're welcome.
 9
              It's because it just doesn't exist.
10
11
              Now, on these dates, on these specific dates that
     you're going to go to a grand jury and get an indictment on,
12
     maybe on these four dates, maybe, just maybe, perhaps, perhaps
13
     you could try surveillance so you could see or you could
14
15
     testify to the jury that, you know, I put my dark glasses on,
16
     whatever you're going to do for surveillance; and I saw that
17
     Dan Hersl was in Harford County for the whole day or that
18
     Dan Hersl was at Lowe's in Carroll County for the whole day.
              But on those dates they don't do it.
19
              And finally, when you look at the particular slips of
20
     overtime that the Government introduced on those particular
21
22
     dates, at the very bottom, they're all authorized.
23
              And I asked Special Agent Jensen: Whose signature's
     that?
24
              I don't know.
25
```

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Well, who authorized it?
 1
              I don't know.
 2
              Did you ever talk to the person? Did you ever find
 3
     out who authorized it?
 4
 5
              I don't know.
              The Government says, I think it was a green checkmark,
 6
 7
    proven, proven, proven.
              Now, who does the Government rely upon? You have
 8
 9
     cooperators.
              Maurice Ward, Evodio Hendrix, as I mentioned before,
10
11
     they were in the SES group together with Jenkins in 2015.
     came to GTTF the summer of 2016. They came together.
12
              Maurice Ward authorized false reports, admitted four
13
     robberies, admitted Oreese Stevenson's safe, entered a plea
14
15
     agreement.
              Now, in these plea agreements -- there's an
16
17
     instruction on this as well. There's a lot of motivation for a
18
     plea agreement. And it's not so much as to what the Government
19
     is asking you to plead quilty to, whether it's robbery,
20
     extortion, drug distribution.
21
              It's the numbers, the guidelines, the penalty. It's
     about the deal. That's the motivation for signing those plea
22
23
     agreements. What am I getting in return?
              And what Maurice Ward received in turn is that he was
24
    not charged with a 924(c), which is use of a handqun in the
25
```

```
commission of a crime of violence. And what he received in
 1
     turn, he was not charged with a separate Hobbs Act robbery.
 2
              Now, what -- his testimony was that Hersl, sometime in
 3
     2017, was called to a meeting by Jenkins. And that's
 4
 5
     post-Oreese Stevenson. Jenkins is -- comes back, and now all
     of a sudden he wants to go after someone else --
 6
 7
              THE COURT REPORTER: I'm sorry. I can't hear.
              THE COURT: Something's . . .
 8
              MR. PURPURA: And the only other relevant information
 9
    he says for the Government is that he actually filled in some
10
11
     overtime slips, which I mentioned before, for Mr. Hersl.
              But what he also says is there's something about
12
13
     airsoft guns which Jenkins was talking about, that everyone
     should have one. But, again, who did Jenkins talk to? He
14
15
     talked to Ward and Hendrix.
16
              I asked him, Was Hersl there?
              The answer's "no."
17
              He also testifies that there were tools in Jenkins'
18
     vehicle. And Mr. Hines put 'em all out here and ropes and the
19
    picks and the shovels and everything else. And, again, I asked
20
21
    him:
          Was Hersl present? Was Hersl present?
22
              And the answer again was "no."
              And we asked him: Did you ever give Hersl any money?
23
              And, again, the answer is "no."
24
              Evodio Hendrix, again, is a part of that same group.
25
```

```
Ward, Hendrix, Jenkins worked together SES. Summer of 2016,
 1
 2
     they come onto GTTF together as a group. He admitted that he
     authorized false reports, admitted three robberies and, again,
 3
     admits the Oreese Stevenson safe of $100,000.
 4
 5
              What does he have as well? What's the benefit of that
    plea? The benefit of that plea is that, number one, he does
 6
 7
    not plead to a 924(c).
              And Maurice Ward told you what a 924(c) meant to him.
 8
     It meant a mandatory five years on top of your initial robbery
 9
     charge; in addition, 25 consecutive years for each additional
10
11
    gun.
              So two robberies, two guns, 30 years on guns alone.
12
13
    And both do not have to plead to a 924(c).
14
              And Hendrix also doesn't have to plead to a
15
     substantive Hobbs Act robbery.
16
              What he tells you is he also -- this is important --
17
    he also was at a Jenkins meeting when they discussed Stevenson
18
     as a big target.
              And it's your recollection, not mine. But my
19
20
     recollection is that he mentioned who was present. And unlike
21
    Maurice Ward, he said Hersl (indicating) was not present.
     mentioned Ward, Hendrix, Jenkins, and one other person, but not
22
    Hersl.
23
              He also mentioned that he did overtime slips, but,
24
```

again, we can't identify those.

25

And he says the same thing about the airsoft guns, the tools, and all his incidents of wrongdoing that Hersl was not part of it.

Jemell Rayam, the truth is that Jemell Rayam, when asked that final question -- I did ask that question. You always say: Is there one question too many you shouldn't ask somebody? And you never ask somebody a "why" question.

But at that point I think that after we dragged -- and I mean, poor Jemell Rayam through everything he did, which was just a litany of lie, lie, lie, lie, lie, that no matter what he says at that time, he's difficult to believe.

And so let's see if he is believable.

He says that he's lied 13 times on police reports, affidavits under oath. He lied to District Court judges, warrant applications. Lied to Circuit Court judges, warrant applications. Lied in legal motion hearings. Lied to juries. Stole money. Stole and resold narcotics and guns here in Baltimore City.

He lied in Internal Affairs investigation in 2010 where he said he didn't know the police officer. There was a lineup with six pictures. He said four of them looked like him; he wasn't sure, despite the fact that the police officer in question went to the academy with him, despite the fact that he had 500 contacts with that very police officer by phone within 30 days of the incident and 34 contacts on that

particular day.

And after all that, when he comes back to the Baltimore City Police Department in 2012, he's rewarded by -- put on an exclusive group, the GTTF.

He admitted the bird feed store robbery where he gets his friend and his cousin with a gun, a badge to break into this bird store and to steal these people's money. And the money was stolen, and the money was split. And then he tells you that he's cooperating as well against his cousin in that particular case.

He admitted the Anderson robbery. And the Anderson robbery, again, was important because he was describing that he didn't want it -- he and Gondo did not want this to be a robbery. They wanted it to be a burglary.

They put a GPS unit on the Anderson vehicle. When the vehicle was far enough away, at that point they went to the house. Rayam knocks on the door, (knocking), again, doesn't want anyone to be home; goes in the house, boom, there's the paramour of Mr. Anderson in the bedroom. Burglary, possible theft, turns into an armed robbery.

He said, Just don't move. I -- could have even said, I'm going to kill you and where's the money?

And in his plea agreement, despite the bird feed store robbery -- that is a robbery -- despite the Anderson robbery -- and that is a robbery -- despite that, he has no 924(c) count

```
that he pleads to, use of a handgun in the commission of a
 1
     crime of violence. He has no substantive Hobbs Act robbery
 2
     that he pleads to. And like the rest, he has a cooperation
 3
     plea, a reduction of sentence.
 4
 5
              What is he going to talk about or what does he talk
     about that involves Mr. Hersl? It's the Hamiltons and then
 6
     it's Armstrong, which I'll touch on in a minute.
 7
              Gondo. Same thing. Lies to -- lies in police
 8
     reports. Lies in legal motion hearings. Lied to juries.
 9
                                                                From
     2008 through March 1st of 2017, stole money, stole drugs,
10
11
     resold narcotics, stole guns. Was part of a drug conspiracy.
    He aided his childhood friend, Kyle Wells, in a drug
12
     conspiracy, tipped him off when law enforcement's there, told
13
     him how to take a GPS off his car.
14
              He admitted to the Anderson armed robbery with a gun,
15
16
    his participation in that. Despite everything he's done, his
17
     plea agreement, no 924(c), no substantive Hobbs Act robbery.
     He has a cooperation plea. He's trying to gain cooperation.
18
    He's trying to get a reduction of sentence.
19
              He talks again about the Hamiltons, 'cause he's there,
20
    Dennis Armstrong, he's not there, briefly. We'll talk about
21
```

that.

22

23

24

25

And then he talks about the Chanel purse. The Chanel purse and the incident at the harbor is important, because if you believe that, then you can believe that Danny Hersl did

have the requisite intent to commit not theft but robberies in the other incidents. That's just a fact.

He says, Gondo, he said that there was a pre-raid meeting between himself, Jenkins, and Hersl where Jenkins said he had a target that we're going to take money from as police officers. We're going to use our force. We're going to break in, take money. May get guns, may get drugs. We're going to take money.

Gondo said that Danny Hersl was there at that meeting. Gondo said that Hersl was all in 'cause he needed money for his house.

That's good. That's huge. It's the biggest piece of cooperation they could possibly have.

So how do you test that? We talked about the Chanel bag, which I'll touch on as well. But how do you test that? So he gets arrested on March 1st, 2016. He has a lawyer, Warren Brown. He told you that. They work out a cooperation plea.

Three weeks later, three weeks after he gets arrested, when the information is just bubbling in his mind and when he wants to just vomit everything out, give it up, he meets with Wise (indicating), Hines (indicating), Jensen (indicating), Sieracki (indicating). They sit down for hours in this debriefing where they pick his mind.

He talks about this incident 'cause he talks about the

```
Chanel bag. So that incident comes up, right then and there,
 1
     on that very first day.
 2
              So I asked him, Why didn't you tell this group of
 3
 4
     government officials here -- when you're supposed to be
 5
     cooperating and telling them the truth, why didn't you tell
 6
     them about this pre-raid meeting where Hersl admits he wants to
 7
     be part of this 'cause he needs the money? That's important,
     isn't it?
 8
 9
              Yes.
              Did you tell 'em?
10
11
              No.
              He said, I didn't tell 'em everything the first time I
12
13
     met 'em.
              Good.
                     Good.
14
              So then I said, Well, you met with them on March 30th
15
16
     and you sat down again, the same four people.
17
              You met with them again on June 14th. You sat down
     with them, the same four people.
18
              You met with them again on September 26th, the same
19
20
     four people.
21
              You met with them finally October 10th, 2017.
              That's one, two, three, four -- four more debriefings
22
     after that.
23
              And I asked him, Did you tell them about those facts
24
25
     at any one of those?
```

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And his answer's "no." Comes out the first time when 1 he takes the witness stand. 2 Ladies and gentlemen, that's classic cooperator's 3 testimony that you just can't believe. That's classic. 4 5 He tells you about the Chanel bag. He doesn't go out with Hersl. They don't socialize together. Hersl doesn't know 6 7 his girlfriend. Doesn't even probably know if he has a girlfriend at that point. 8 But Hersl gratuitously is going to take this Chanel 9 bag -- 'cause he's a thief -- not keep it for himself, not keep 10 11 it for his girlfriend, but give it to Gondo. Doesn't make 12 sense. 13 Why is he saying this? Then you realize why he's saying it, because the 14 15 Government eventually finds out who his girlfriend is. And so 16 they go to his girlfriend and they say, Where'd you get that 17 Chanel bag from? 18 And what does she say? I got it from Gondo. Gondo took it. If something's 19 20 missing, Gondo took it, not Hersl, because if Gondo would have 21 told her why co-Police Officer Danny Hersl got it for me, she'd 22 be right up there on that witness stand. 23 Donald Stepp, I'm glad the Government and I use different pictures for Mr. Stepp. 24 25 Just as a metaphor, this comes to my mind. And I'll

```
be real quick about it because I'm talking too long already.
 1
     When you see Mr. Stepp and you see some of these cooperators --
 2
     and I'll be quick -- bottom line is something like this:
 3
              There's an older man lives out in the desert in
 4
 5
    Nevada, lives in a trailer. He goes out every day for a walk.
 6
     And when he goes for that walk, he brings his shotgun with him.
 7
     Why does he bring a shotgun? Because if you're ever in the
     desert in Nevada, they have rattlesnakes.
 8
              So he's out there with a shotgun, goes for a walk.
 9
    And he comes up to the biggest darned rattler he ever saw. And
10
11
    he puts up that gun, and he's about to shoot it. The rattler
     looks up and says, Old man, look, I'm old like you. I'm cold.
12
13
     I'm sick. Don't shoot me. Help me.
              So the old man takes pity, picks up that rattler,
14
15
    brings it home, gives it a little milk, little warmth.
16
     days later, it's healthy as can be.
17
              Old man picks that rattlesnake up, going to bring it
     right back up outside. And as he does it, the rattler turns
18
19
     and bites him.
              As the old man's lying there, he says to the
20
     rattlesnake, Mr. Snake, I took pity on you. I brought you in.
21
22
     Why did you bite me?
23
              And the snake said, Sorry, old man. Once a snake,
24
     always a snake.
25
              And I say that with Donald Stepp on the screen.
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Donald Stepp admits from a very young age, thief, credit card fraud. He volunteers he goes to jail for that for a fairly lengthy period of time. Burglaries, drug user. He knows how bad drugs are. He knows that put him in a bad situation. Doesn't stop him from using a little bit. Doesn't stop him from selling that stuff to anyone he can. Sells it to co-workers and others. Builds up his drug cartel when the market, housing market goes out in 2008 and he has this \$800,000 house. There's international connections. In his home there's a large amount of heroin, cocaine, and crack, enough crack that he has a mandatory ten years to life. Government has his cell phone. Again, a treasure trove of pictures are on that cell phone. Government shows you some of those pictures, but not one of

those pictures is Danny Hersl (indicating).

He tells you he takes a video, which the Government showed you, of Jenkins apparently doing some sort of improper work.

And I ask him, Why did you keep that?

He goes, Insurance, because he knows that he's involved with Jenkins. He doesn't trust Jenkins, doesn't believe a word Jenkins says, and he wants to have insurance.

Why does the Government call him in this particular For the gratuitous statement that he says that Jenkins,

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who he doesn't trust, who exaggerates and lies, says to him
that Daniel Hersl is the most corrupt cop. That's why the
Government calls and vouches for Donald Stepp, 'cause they're
vouching for him; make no mistake about that.

He also tells you -- and this is why you can really
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doubt him.

He also tells you that after the Armstrong storage locker, the one that he breaks into, the one with that foot -- have we seen that foot enough? Okay. I have. No offense.

Are we going to see it again today? All right. Maybe.

All right. That's the one I'm talking about, the Armstrong storage locker, right? What he says is he gets a call from Jenkins right afterwards that says -- and, of course, Jenkins is going to -- can you imagine? Jenkins says, Stepp, I need money right away. I need the money for Danny Hersl because Danny Hersl gave me the information about the target here.

Well, first of all, Donald Stepp has never talked to Daniel Hersl, never met Daniel Hersl; saw him briefly with 400 police officers at one saloon somewhere; and then saw him briefly, allegedly, when their cars passed by and he gets a tracking device from Jenkins. That's it.

Never introduced to him. Doesn't know his name.

Nothing. Except now he does, Danny Hersl.

So Jenkins says, Danny Hersl gave me the tip. 1 Well, we know that's wrong because we know from the 2 Armstrong investigation we went into, that was a random stop. 3 They see the vehicle. Armstrong comes out of the 4 5 storage locker. They pull the vehicle over, allegedly no seat 6 belt, high-speed chase, cocaine being thrown out. Then they 7 get the search warrant. This is not a target. This is not an investigation. 8 No one gives Jenkins this target. 9 10 Donald Stepp lied. He lied because he wants to 11 cooperate. He needs to cooperate. If you don't believe he lied on that, talk about the 4 ounces. Then he says that 12 13 Hersl's upset about the 4 ounces. So who writes the search warrant for the storage 14 15 locker? 16 We know that John Clewell did it 'cause that's the 17 testimony. John Clewell's the honest police officer. There's 18 absolutely no testimony, none whatsoever, that Dan Hersl went 19 anywhere near that storage locker. Nothing. 20 Who went to that storage locker? The man that wrote 21 the warrant, the man that took the inventory, and that's Clewell. And nothing was taken by John Clewell. 22 23 What do they all have in common? Not one of the five have a 924(c) count. 24 25 What do they all have in common? They're all

They want that get-out-of-jail-free card. 1 cooperators. Part of your instructions -- and you'll see the 2 instructions [reading]: accomplice or cooperator testimony is 3 of such nature that it must be scrutinized with great care and 4 5 viewed with particular caution when you decide how much of that testimony to believe, how much or none of it. 6 7 [Reading]: A witness who has entered into a plea agreement or expects a motion to reduce a sentence has an 8 interest in this case different from any ordinary witness. 9 You know what? That takes us back right to where we 10 11 started in opening. It takes us back to these incidents. Make no mistake about it: I'm not trying to disparage 12 any of these individuals, but I'm not trying to build them up 13 They are what they are. 14 either. Jimmie Griffin, on November 5th, 2014, had a loaded 15 16 9-millimeter handgun, 100 grams of heroin-plus, two 17 digital scales, and a kilo press. I said that in opening. 18 We've proved it in this case. And there's no question about 19 that whatsoever. 20 Jimmie Griffin had a prior handgun violation in 2011 as a young man. There's no question about that. 21 22 Ms. Moyé, can we have the document camera, please.

This is Hersl 28, which is going to be the

Tyrone Creighton bank account. I'm just going to put it up

here just to refresh your recollection. This screen's not on

23

24

25

here, but that's fine.

And I want you, when you get a chance -- the only -the only cash deposit -- the only cash withdrawals are from a
very short period of time after the initial check is put in the
account, \$2,666 [sic] from October 20th through October 28th,
2014. October 28th, 2014, at best, those are cash withdrawals.

There are other cash withdrawals, and you're going to see those. But those are all spent at a strip club, spent at a strip club.

Ms. Irby says she goes to the bank the day or the day before November 5th. That's not accurate. That's not what happened.

Mr. Griffin said he received \$16,000. Take a look at the books. That didn't come from here, didn't come from lead paint poisoning. That's when he said he was supposed to be paid back by his cousin. Didn't come from here.

Now, I called Detective Iacovo. Government didn't call Detective Iacovo. I had to call him.

Do you think a Baltimore City police officer wanted to come to this particular case? Do you think they want to get anywhere near that witness stand? But he came.

He came because he testified that just before, right around noon, 12:05, a vehicle pulls up. A gentleman gets out, goes inside, spends about three minutes inside, comes out. And he remembers it, Iacovo. He's just going to be deployed.

That's the gentleman that's going to be deployed in a short period of time.

He remembers it because George Lee had these very tight pants on, so tight that he couldn't put his money that he was carrying, a bundle of money from the house, from the target house in his pants. And he saw that money.

They chased the car down. The car was stopped at that time by Romeo, Sergeant Burns, and Detective Fassl. K9's called. And in that car is 8,500-and-some-odd dollars. That car just came and that person just came from Jimmie Griffin's house.

That is a narcotic transaction. Drugs were purchased. George Lee is leaving with the cash when the car is stopped. So if he did have money, if Ms. Irby did give her [sic] money, then George Lee got that money for the drugs.

And you would have never known that. Never if I didn't call them as witnesses.

Jimmie was arrested in front of numerous police officers, numerous. Romeo and Iacovo say that. And you wouldn't have known that if I didn't call them.

Romeo, who had been debriefed by another Assistant
United States Attorney -- by two Assistant United States
Attorneys and a Special Agent via phone in late December, Romeo
at that time said he was there when Hersl went into the pocket
and took out the money. And Romeo told the Assistant

```
United States Attorney and he told the agent that it just
 1
     didn't look like a lot of money. Certainly didn't look like
 2
     $6,000. And you wouldn't have known that if I didn't call
 3
     Romeo.
 4
 5
              Jimmie Griffin said, They pulled my pants down.
                                                               They
     were going to do a rectum check on me. Iacovo, Romeo said,
 6
     That's ridiculous.
 7
              Hersl seized the money. He was taken away.
 8
              And you wouldn't have known that lie if I didn't call
 9
     the police officers.
10
11
              Herbert Tate, November 27th, 2015, the Government
     showed you one photograph, but it's not the photograph where
12
     the incident occurred. Herbert Tate, Hersl 16.
13
              This is the end of Robb Street. This is the stash
14
15
     area, classic area where you keep drugs. Even Mr. Tate said,
16
     Yes, it is a open-air drug market right there.
17
              The drugs were seized right here (indicating).
     Herbert Tate's arrested right here (indicating) after he was
18
19
     dealing in front of Fassl and Sergeant Burns and Dan Hersl
20
     (indicating) and was arrested.
21
              Found in that cut was one bag with 15 gelcaps of
     heroin and another bag of 50 gelcaps of heroin. Found on
22
23
    Herbert Tate was approximately 200-plus dollars.
     Government says we are disparaging because people carry singles
24
```

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around. He tells you when he testifies he only had large bills

25

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on him. And that's why we introduced this exhibit, which is
Hersl 18, which shows that the money seized off of Herbert Tate
was consistent with small-scale heroin cap distribution, 10 and
5 per vial.
```

Herbert Tate tells you he lives in Baltimore County.

Herbert Tate tells you he was in that same area two days before when Hersl and Sergeant Burns and Fassl stop him, two days before. He then has \$600 and the same work stub in his pocket. They don't take his money that day, and they give him a break and let him go.

Two days later, he's back there again, and he wants you to believe that he's there just because he's visiting friends and not selling drugs. Again, in that neighborhood.

So what he's doing is he lives somewhere else and he's pedaling his drugs in another neighborhood.

Antonio Santiful. Antonio Santiful, as I told you, on November 28th, 2015, he was in the 2100 block of Aiken Street.

Antonio Santiful told you that he knows that's an open-air drug market. He admitted that.

He told you he was there with, as I told you in the opening, Deontray Brown. He basically admitted that

Deontray Brown had six plastic caps of cocaine in his mouth which was spit out when Hersl arrested him, along with Sergeant Burns, stopped him.

He told you that his vehicle, the vehicle that he was

```
driving in, the Lexus truck, was his sister's vehicle.
 1
     then he said that the loaded Smith & Wesson, .32-caliber
 2
     revolver and the Zips of cocaine in his sister's vehicle were
 3
     not his. He lied to you.
 4
              You can't believe him. Because the jail call the
 5
     Government didn't play was the jail call where he said, The
 6
 7
     feds might pick me up. I'm gone.
              Why the feds going to pick him up? Third-time gun,
 8
     I'm gone. He's smart enough to know that.
 9
              Then he goes on to say, That's why I was f'ing trying
10
11
     to pull the F off. Now I just got to swallow some f'ing pills,
     acknowledging the pills and he's going to have to eat 'em now.
12
              And he finally says on the issue of possession of that
13
     qun and the pills, My record is f'ing so f'ed up, yo. And it's
14
15
     like every time I get locked up for a gun, it's like a gun or
16
     something, every time I get locked up.
17
              Mr. Santiful is not believable, at all.
              Finally, Ronald Hamilton and Dennis Armstrong -- last
18
     two and I sit down. I'll be quick. I know; it's been a long
19
     time. Long for you and long for me. I apologize.
20
              Look, did we ask Ronald Hamilton too many questions on
21
     cross-examination? Did -- and he broke down on the witness
22
23
            He did. It was terrible. You know, they didn't -- no
     stand.
     one, no one, no one, no one.
24
```

But I guess the bottom-line point of that, the

25

bottom-line point of that is that sometimes, just sometimes from the witness stand, you want the truth. And the truth here that he was a drug dealer was just so evident. You know, it's like someone just couldn't let go, just keep having to go after.

I mean, you've got a guy that just gets two federal, long-term incarcerations for large quantities. The first time is in excess of 500 grams. The second time was over 16 kilos of cocaine. And he's out on supervised release.

And now he has this wonderful house out in the country out there. He's gambling -- I put the gambling receipts in -- a million -- \$1.2 million in 2015, 2016, through October. And his losses are in the hundreds of thousands for 2015 and 2016.

The Government tries to vouch for him by putting these puny rental receipts in where he gets 10 percent of it.

So, yeah, it's a little annoying. So we went after him probably too hard and it was wrong. So let's put it aside. He's a drug dealer. He's a drug dealer. God bless him. Put him away right here.

Let's talk about what matters right here to this particular case as far as Hersl's concerned.

What you have from Gondo and Rayam -- first of all, as far as it was Rayam's investigation, as far as Gondo testified to, he thought it was a legitimate warrant, a probable cause warrant signed by a District Court judge.

```
There was cooperation testimony. You had his own
 1
     cousin, Mr. Hamilton's own cousin, giving information that the
 2
     man's a major drug trafficker and that the man has a gun.
 3
     That's good information. That goes in a warrant.
 4
 5
              There's surveillance. There's surveillance by
     Jenkins. And that went in a warrant, that Jenkins saw drug
 6
 7
     trafficking actually go down. And they followed him to his
     multiple houses, and they know he has multiple dwellings on
 8
     Fairmount Street.
 9
             And as far as John Clewell's concerned, John Clewell
10
     did surveillance of Fairmount Street. That's in the warrant,
11
    before the warrant is signed. Fairmount, the assisted living
12
    houses which he had for adults who have disabilities.
13
              Clewell had prior surveillance there. And that's why
14
15
     on July 8th, Clewell went back to that area for the execution
     of the warrants, because he knew that area. For no other
16
17
     reason. He was already there.
18
              So you have a warrant and you have Dan Hersl.
19
    Dan Hersl's called in, last minute. And who calls him in?
20
    Does Gondo call him in? Does Rayam call him in? Does Jenkins
21
     call him in? Have a meeting, say, Hey, man, we're going to hit
22
     this guy. He's a major drug trafficker. We're going to get a
23
    biq score?
             No one, not even a cooperator, said there was that
24
    meeting. That didn't happen.
25
```

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He's called in by John Clewell. That's the man he's working with.

Clewell calls him in for surveillance. Only thing
Hersl knows, based on the evidence, is there's a warrant with
statewide jurisdiction. We, GTF [sic], have statewide
jurisdiction through Maryland State Police because we deal in
multiple jurisdictions.

He's told to watch the target. He watches the target. He's told to take down a target. He takes down the target. They bring him back to the police substation. He's questioned, as Hamilton said, primarily by Jenkins and Rayam.

And then he's told by Jenkins, Come with me. We're going to go to the house to execute the search warrant. And that's what the evidence shows. That's it up to this point.

Now, here's where it changes. Gondo and Rayam, the cooperators, get-out-of-jail-free people, they say that this man on trial here (indicating), he does a sneak-and-peek with them. We all go in the house. He says -- they say, Jenkins and Rayam, say that that man there, Hersl, is upstairs on the second floor. Sees the money, sees me count the money. We talk about the money.

He roams around the whole house, Hersl. What does
Mr. Hamilton say? Mr. Hamilton, Mr. Hines said, has been
mistreated. What does he say? And this -- on this point, he
has absolutely no reason to lie. Maybe to lie about you're a

drug trafficker, but not about what happened at your house.

What he says is that when they pulled up, the older white guy, Hersl, him (indicating), stayed with me. I sat in the car -- he made a point. I sat in the car. Hersl stood outside the car.

He, Hersl, took me into the living room, took my wife in the living room. He, Hersl, sat with me in the living room with my wife the entire time.

And then he went on to say, The only time I took my eyes off him or he took his eyes off me was when I was taken downstairs for a brief minute by Jenkins and then brought right back up.

Other than that, for the entire time, Hersl sat right in that living room, because that's where he sat, 'cause that's what he was doing. He did not see the money, did not count the money, did not take 3,000, did not take 10,000, did not take 20,000. And that's what Hamilton says.

They got the transcript.

Then what Gondo says is when everything's done, everything's done, Rayam comes out of the house. Maryland State Police are gone. Carroll County police are gone.

Jenkins, Hersl, Gondo outside. Rayam comes out after everything, and he has something in his hand, bag. Everybody sees him, puts it under the seat; they drive off.

They go eat; no discussion about money. Later on that

```
night, there's money given to Jenkins to give to Hersl. Hersl
 1
     admits he took that money. There's no question about it.
 2
     Whether it's 3,000, 4,000, 2,000, he took money that night.
 3
              Ladies and gentlemen, that's classic, classic
 4
 5
     receiving stolen goods. The money's taken. At the point it's
     taken, he has nothing to do with it, not part of it, not taken
 6
 7
    by force, not by him. Later on, he receives a portion of it.
              Is it wrong? Darned straight, it's wrong, dead wrong.
 8
    But it's not extortion, and it's not robbery.
 9
              The last incident is Dennis Armstrong, and this is the
10
11
     last incident involving Hersl.
              I told you that Dennis Armstrong had three prior
12
     possessions with intent to distribute. He did have three prior
13
     possessions with intent to distribute. On August 8th -- that
14
15
     means he had three prior felony distributions. He's still on
     the streets of Baltimore City, and he's got a cache of drugs.
16
17
              This is just a random stop, one of their quick stops,
     like they said, seat belt violation. They pretend they go on
18
     the mic, We got our guy. He knows he's got drugs, like he
19
     said. He knows he's dirty. He knows he has three prior
20
     convictions, so he takes off.
21
              They chase after him. He bails out. John Clewell,
22
23
     who's in the passenger seat, jumps out, chases him down, grabs
    him. He's got some drugs on him. And they arrest him.
24
```

And then they bring him back right to the storage

facility, 'cause at this time John Clewell is going to write a warrant to get into that storage facility. And Danny Hersl is left searching the car.

Now, if at the time of taking the money Dan Hersl had the intent to steal the money, he wouldn't do it right in front of Mr. Armstrong.

Mr. Armstrong was sitting there in the police vehicle, as he said from the witness stand. And he saw Dan Hersl go into the glove compartment, take the money out, and put it into a bag. Whether it's a proper evidence bag or another bag they used to store goods at that time (indicating), we don't know.

But it was put into a bag at that time, and that's what happened.

He's then transported, transported to the police station. He's gone now, but everything which occurred was done in front of him. That's key, because there was no intent for him at that time to do anything wrong.

While he's sitting there waiting for John Clewell, for God knows why, to come back with that warrant, Dan Hersl decides, I'm here with Rayam. Let's go for a ride. We got the money.

And at that point he either gives Rayam 500 -- they split 700. If you believe Gondo or you believe Rayam, we don't know what happens, but that's what goes on. That's the theft.

That's wrong, absolutely wrong. But it's not what he's charged

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with here.
 1
              Look, after 17 years as a street cop, his conduct was
 2
            And, yes, it was unlawful. And he is and he should be
     wrong.
 3
     and he will be punished for that conduct.
 4
 5
              It is truly up to you to decide for exactly what that
     conduct was on Dan Hersl's part.
 6
              I'm asking you to consider the evidence. And I'm
 7
     asking you, when you do, to conclude that he's not quilty of
 8
     the racketeering and certainly not quilty of the Hobbs Act
 9
     robbery and the robbery with use of a deadly weapon.
10
11
              I want to thank you for your time.
              THE COURT: Thank you, Mr. Purpura.
12
              And I'll see counsel at the bench on the schedule.
13
          (Bench conference on the record:
14
              THE COURT: So given that it is now quarter of 5:00
15
16
     and I think everybody's probably exhausted and I don't think
17
     the jury wants to stay for another two hours, I think we need
     to recess and continue these tomorrow.
18
              So I'm going to tell everybody to be back at
19
     10 o'clock, and we'll -- two more arguments and go ahead with
20
21
     the case. Okay?
22
              MS. WICKS: Thank you, Your Honor.
              MR. PURPURA: We'll be in for a heck of a rebuttal
23
24
     tomorrow.
25
              THE COURT: Well, you took a few more than 45 minutes,
```

```
1
     Mr. Purpura.
 2
              MR. HINES: Longer than me.
              THE COURT: So here we are.
                                           Okay.)
 3
          (Bench conference concluded.)
 4
 5
              THE COURT: All right. Well, ladies and gentlemen,
     it's been a long day. I expect that you will still hear from
 6
 7
     counsel for Mr. Taylor. And as you know, the Government has
     rebuttal, and then I'll have a couple more words for you.
 8
              It is too late to get all that done in a reasonable
 9
     time this afternoon. So I appreciate your being willing to
10
11
     stay, but it would be longer than I can reasonably expect you
     to do that.
12
13
              So, again, the case is not over. You're going to hear
     more argument. You're going to hear a little bit more
14
15
     instruction, and then you'll go back and deliberate. So keep
16
     an open mind. Leave your notes here. Don't talk about the
17
     case.
              We'll ask you to come back at 10:00, and we will
18
     continue and conclude the arguments tomorrow morning. And you
19
20
     will get the case tomorrow.
              So I will just ask, again, when you're out
21
     deliberating, it's entirely up to you the length of your
22
23
     deliberations. Again, if you are able to stay a bit later, if
     you find yourselves at 5 o'clock and you're still deliberating
24
     and you'd like to stay until 5:30, quarter of 6:00, something
25
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Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

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like that, that's fine.
 1
              I don't keep people later than 6:00 and not even that
 2
     late if it doesn't work for all of you. But, again, if you can
 3
     arrange your schedule a little bit so that if you choose to do
 4
 5
     so, you can continue deliberating a bit after 5:00, please do
     that.
 6
              But for right now, thank you. You're excused, and
 7
     we'll see you tomorrow at 10:00.
 8
          (Jury excused at 4:46 p.m.)
 9
              THE COURT: All right. Counsel, any issues? Anything
10
11
     we need to talk about before tomorrow morning?
              MR. WISE: Not from the United States, Your Honor.
12
13
     Thank you.
              MS. WICKS: No, Your Honor.
14
              MR. PURPURA: No, Your Honor.
15
16
              THE COURT: Okay. See you all tomorrow at 10:00.
17
          (Court adjourned at 4:47 p.m.)
          I, Douglas J. Zweizig, RDR, CRR, do hereby certify that
18
     the foregoing is a correct transcript from the stenographic
19
     record of proceedings in the above-entitled matter.
20
21
                                 /s/
22
                      Douglas J. Zweizig, RDR, CRR
23
                      Registered Diplomate Reporter
                      Certified Realtime Reporter
24
                     Federal Official Court Reporter
                                August 16, 2018
                         DATE:
25
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Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

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