

JUDGE MARYELLEN NOREIKA CONFUSES HUNTER BIDEN'S MEMOIR FOR THE NYPOST

Judge Maryellen Noreika has finally ruled on (three of) Hunter Biden's motions to dismiss; like Judge Mark Scarsi, she rejected them.

- Immunity
- Selective and Vindictive
- Special Counsel

In a follow-up, I'll show how Noreika conceives of what went down in the failed plea hearing last summer. Her conception of it has some problem of its own, but it does shore up some problems created by Judge Scarsi's opinion.

Before I get there, though, I want to look at a key passage of her selective and vindictive prosecution opinion, in which she lays out what she suggests is sound reason for this prosecution.

Although Defendant asks this Court to find that the prosecution's decision to abandon pretrial diversion and proceed with indictment on the three firearm charges only occurred because of Defendant's political affiliations (or his father's political affiliations), Defendant has failed to offer "clear evidence" that that is what happened here. Moreover, in this case, there appear to be legitimate considerations that support the decision to prosecute. See *Armstrong*, 517 U.S. at 465 (recognizing "the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship

to the Government's overall enforcement plan" as legitimate factors that may motivate a particular prosecution).
Defendant has published a book about his life, where he admitted that his firearm was taken from him at some point after purchase and it was discarded (along with ammunition) in a public trash can, only to be discovered by a member of the public. (D.I. 68 at 2, 7). The government has an interest in deterring criminal conduct that poses a danger to public safety, and prosecutors are not frozen in their initial charging decisions. See Goodwin, 457 U.S. at 382 ("A prosecutor should remain free before trial to exercise the broad discretion entrusted to him to determine the extent of the societal interest in prosecution. An initial decision should not freeze future conduct.") [my emphasis]

This paragraph is a formulaic paragraph in virtually all selective and vindictive prosecution opinions. You cite Armstrong for reasons prosecutors might charge besides animus, you cite Goodwin to lay out that they can change their minds, and then you cite some thing that justifies the prosecution.

Because the standards laid out in Armstrong and Goodwin are so high, you don't have to include much to justify meeting that standard.

But what you cite generally has to be true.

And it is not true that Hunter Biden wrote in his memoir about the gun. He wrote about someone else pulling a gun on him, which is cited on a different page of the government response Noreika cites for the claim.

One night, while looking for crack and stepping around people curled up on cardboard, the defendant pulled back the flap on a tent and, from the pitch black, saw a gun pointed at his face.

Id. at 190.

Only a few months after this happened, on October 12, 2018, the defendant chose to buy his own gun, and during this period he continued to be addicted to crack. Guns and drugs, of course, are a dangerous combination.

He wrote texts – cited in other parts of the selective prosecution motion – to Hallie about the gun.

On October 23, 2018 (the day his then-girlfriend discarded his firearm), the defendant messaged his girlfriend and asked, “Did you take that from me [girlfriend]?” Later that evening, after his interactions with law enforcement, he messaged her about the “[t]he fucking FBI” and asked her, “so what’s my fault here [girlfriend] that you speak of. Owning a gun that’s in a locked car hidden on another property? You say I invade your privacy. What more can I do than come back to you to try again. And you do this???? Who in their right mind would trust you would help me get sober.” In response, the girlfriend stated “I’m sorry, I just want you safe. That was not safe. And it was open unlocked and windows down and the kids search your car. You have lost your mind hunter. I’m sorry I handled it poorly today but you are in huge denial about yourself and about that reality that I just want you safe. You run away like a child and blame me for your shit . . .”

I believe somewhere texts, which I believe to be between Hunter and Keith Ablow, in which Hunter discusses the incident, got cited in this case.

But prosecutors should not have accessed *any of the texts* before charging. They didn’t have a warrant to do so until 81 days after they

indicted.

While Hunter Biden has not yet made a claim, texts between Hunter and Ablow might fall under a doctor-client privilege.

And Abbe Lowell was at least claiming he'd file a motion to suppress the laptop.

Effectively, then, Judge Noreika's rationale for why it was sound for prosecutors to charge Hunter Biden either amounts to charging Hunter because someone pulled a gun on him (a ridiculous detail to include in the response motion anyway, since it doesn't pertain to the crime), or because NY Post has been publishing data that Hunter alleges was stolen from him.

Update: The fact that Noreika relies on evidence obtained from Hunter's laptop is important given the way she dismisses the import of Rudy Giuliani in the selective prosecution motion.

In attempting to show discriminatory purpose, Defendant points to past and recent statements made by former President Trump, alleged conduct of one of the former president's personal attorneys (Rudy Giuliani) and a purported criticism and pressure campaign by Congressional Republicans. (See *id.* at 27-37).

None of this evidence, however, is relevant to any alleged discriminatory purpose in this case. The charging decision at issue here – from 2023 – did not occur when the former president was in office. Nor did it occur when Mr. Giuliani was purportedly trying to uncover “dirt” about Defendant and presenting that information to U.S. Attorneys across the country. (See *id.* at 30). And the pressure campaign from Congressional Republicans may have occurred around the time that the Special Counsel decided to move forward with indictment instead of pretrial diversion, but the Court has been given

nothing credible to suggest that the conduct of those lawmakers (or anyone else) had any impact whatsoever on the Special Counsel. It is all speculation.