

RUDY GIULIANI CLAIMS HE'S SHOOTING BLANK DOCUMENTS

Ruby Freeman and her daughter Shaye Moss have, as Beryl Howell invited them to do, moved to compel Rudy Giuliani to comply with discovery in their defamation lawsuit. The two 2020 Georgia election workers sued for the damage caused by the lynch mob Rudy summoned by falsely claiming they were attempting to steal votes after he saw a video showing Moss passing her mother a ginger mint.

The motion and all its exhibits are here.

What seems to be happening is that Rudy, having had his phones seized in 2021 and successfully avoided – thus far – charges for his Ukraine influence-peddling, is deliberately slow-walking discovery here to avoid identifying any devices or records that prosecutors can use in that investigation, the Georgia investigation, or Jack Smith's January 6 one, all while sustaining a story that is already starting to fall apart.

As described in the motion to compel, Rudy's non-compliance has included:

- Refusing to turn over any phone or financial records
- Refusing to explain what accounts and devices he has included in his searches
- Failing to search for texts and messaging apps from the phones seized in 2021
- Providing discovery based on much earlier requests from the January 6 Committee and Dominion's lawsuit against him, rather than the

requests from Freeman's lawyers

- Providing documents on Hunter Biden along with one Pentagon City Costco receipt
- Others – like Bernie Kerik and Christina Bobb – similarly refusing to comply
- Claiming, then disclaiming, reliance on “unknown GOP operatives” for the false claims made about Freeman
- Refusing to describe how he became aware of the surveillance footage on which he based his false claims about Freeman and Moss

As a reminder, back on April 21, 2021, DOJ obtained a warrant for around 18 of Rudy's phones in conjunction with the investigation into Rudy's Ukrainian influence peddling that Bill Barr had successfully obstructed. By September of that year, DOJ had convinced Judge Paul Oetken to have Special Master Barbara Jones to review *all* the contents on his phones, not just that pertaining to the Ukraine warrants. Since then, I've been arguing that DOJ could – and at this point, almost certainly has – obtained that content for use in the January 6 investigation.

Dominion sued Rudy back in 2021. The January 6 Committee subpoenaed Rudy in January 2022 and interviewed him in May 2022. Those are the discovery requests on which Rudy is attempting to rely in this suit, rather than doing searches specific to the requests made by Freeman's lawyers.

But after May 2022, Rudy's exposure in Georgia went up. In addition to Freeman's lawyers filing

their amended complaint on May 10, 2022, Fani Willis convened her grand jury on May 2, 2022, subpoenaed Rudy to testify in June 2022, and he testified in August. It is virtually certain that Rudy gave answers to Willis – at the very least, about what he knew of Trump’s call to Brad Raffensperger on January 2 – that subsequent testimony has since disputed and on which topic he has since amended his interrogatory response.

The materials in this motion reveal that Rudy’s lawyer in this matter (Joe Sibley – who represented Christina Bobb in a J6C deposition that conflicts with Rudy’s answers here, though Robert Costello was present for Rudy’s March deposition) at first promised thousands of documents to Freeman’s lawyers, while claiming that most documents would be unavailable because of the Special Master process tied to the Ukraine investigation. Last July 12, Rudy provided 1,269 documents he had also turned over to Dominion’s much earlier request, which Freeman’s lawyers describe as, “his first and only substantial document production to date.”

Then, on August 3, Robert Costello made a showy announcement that SDNY had ended the Special Master process, which is not the same thing as getting a letter that he’s not a subject of that investigation anymore. Shortly thereafter, Freeman’s attorneys pointed out that the excuse Rudy *had* been using to limit his discovery in this case was no longer operative. He had the phones that – he claimed – included all his communications from the period during which he had started the conspiracy theories about Freeman.

After that showy announcement from Costello on August 3, things changed dramatically. In September, Sibley told Freeman’s lawyers there were 18,000 documents relevant to discovery in the materials seized from his phone. A month later, he said there were 400. In October, Rudy turned over 177 of those documents, 51 of which were blank. Since then, Sibley seems to have

provided answer after answer that amounted to throwing up his hands when describing the state of Rudy's discovery.

Rudy is quite literally attempting to claim he can only shoot blank documents in hopes of getting through this discovery process.

In his March 2023 deposition, Rudy claimed that the physical phones returned by SDNY – which he says only happened in August – were “wiped out.” What actually seems to have happened is that he hasn't figured out how to access the content saved to the cloud by discovery vendor TrustPoint, and may *not* have tried to access the phones themselves, which I believe Costello had publicly claimed to have been returned earlier last year.

But far and away the best way to understand his answers are that, first of all, he and Bobb gave materially inconsistent answers while being represented by Sibley, most notably on the topic of whether they participated in the Brad Raffensperger call, which Bobb said they did and Rudy originally claimed – and presumably claimed to Fani Willis' grand jury – that they had not.

Just as importantly, Rudy may be aware of both messaging apps and phone accounts that he's not certain prosecutors in SDNY, Georgia, or DC have identified, so he's refusing to be forthcoming about all the devices and phone accounts he used. There are probably communications from his phones that Costello successfully claimed were privileged during the SDNY Special Master process, which would be obviously crime-fraud excepted in any proceeding before someone who knows the January 6 investigation well. Prosecutors in both SDNY and DC will be able to tell after a quick review of exhibits included with this motion to compel whether Rudy's claims about the status of the phone content from TrustPoint are accurate.

And therein lies the risk of the game that Rudy is playing.

This would be an obviously bullshit response

before any judge, including Carl Nichols (who is presiding over the much more leisurely Dominion suit against Rudy).

But by luck of the draw, he's attempting this stunt before Beryl Howell, who even on good days does not suffer fools at all, much less gladly, and who until just a month ago was the Chief Judge presiding over all the grand jury proceedings in DC, including the January 6 investigation. She's one of just two or three judges who knows whether DOJ asked for and obtained a warrant to get the stuff from Rudy's phones in SDNY. If they did (and I'd bet a very good deal of money they did), she would have seen an affidavit explaining in what form DC USAO understood that phone content to be, and if they did, she has likely overseen discussions about any further attorney-client protections DOJ had to adhere to. If DC USAO obtained warrants for other cloud content, she might also know about any accounts that Rudy is *not* disclosing to Freeman, including those whose email and phone accounts Rudy consistently used as a proxy. She likely has a sense of how many phone accounts DOJ has identified for Rudy, none of the call records of which would be subject to attorney-client protection. She may know of other aliases that Rudy used in his assault on the election.

Rudy is pulling this contemptuous stunt in front of the one judge who may know the extent to which he's bullshitting.

Which may be why, at a few points in Freeman's Motion to Compel, her attorneys note that *they're* only asking for modest relief, basically just leverage to get Rudy to actually answer the questions, as well as attorney fees for their time he has wasted.

But Judge Howell? Well, if *she* wants to use her discretion to provide expanded relief, Freeman's lawyers say, they'd be open to that too.

The relief Plaintiffs seek in this Motion is narrow, while recognizing that

the Court in its discretion may enter additional forms of relief, including sanctions. Plaintiffs reserve all rights relating to seeking expanded forms of relief in the future.

At this point, there are at least two criminal investigations into Rudy and two civil suits – January 6, Georgia, Dominion, and this suit. Even before reviewing his J6C transcript, it's easy to identify plenty of ways his evolving answers here, amended in part because of inconsistent testimony given before the J6C, conflict with what he must have answered before the Georgia grand jury, which could start issuing indictments any day.

Juggling all that legal exposure would be difficult for a sober, organized man with little real legal exposure.

For Rudy, though, this insane approach may be, at best, a futile attempt to limit the damage this civil case can do to his criminal exposure.