

SMOKING GUN! FBI DIDN'T HAVE "SUFFICIENT EVIDENCE" TO PROSECUTE FIREARMS CRIMES AGAINST HUNTER BIDEN

Let's go back to the Devlin Barrett story that kicked off the manufactured scandal about DOJ slow-walking the Hunter Biden investigation.

That story wasn't *just* about tax charges, though those have gotten the bulk of attention. That story claimed that Federal agents had enough evidence to charge Hunter Biden with a false statement tied to purchasing a gun in 2018.

Federal agents investigating President Biden's son Hunter have gathered what they believe is sufficient evidence to charge him with tax crimes and a false statement related to a gun purchase, according to people familiar with the case.

[snip]

The gun paperwork part of the investigation stems from 2018, a time period in which Hunter Biden, by his own account, was smoking crack cocaine.

In October of that year, Biden purchased a handgun, filling out a federal form in which he allegedly answered "no" to the question whether he was "an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?"

According to a book Hunter Biden later wrote about his struggles with substance abuse, he was using drugs heavily that

year.

While it is definitely true that prosecutors ham sandwiched their way through a grand jury on September 14, 2023, charging the President's son with three felonies (potentially even by relying on the plea colloquy prosecutors obtained before reneging on the deal they made to get it), revelations from that last week have made it clear that while they had enough evidence to *charge* Hunter Biden, they didn't have enough evidence to *prosecute* him.

At the time they indicted, David Weiss had the case file from local authorities showing state prosecutors declining to charge the case days after discovering the gun. Importantly, that case file included evidence photos of the gun itself.

[A]n October 2018 state police case file of the firearm incident that includes interview memoranda and deliberations among Delaware state prosecutors regarding whether to file charges—per the file, on October 30, 2018, after reviewing the facts, New Castle County prosecutors decided not to prosecute and closed the case.

[snip]

The prosecution produced a Delaware state police case file, which includes a summary of an interview Mr. Biden gave police in October 2018 and other information about the purchase, discard, and recovery of the firearm, as well **as evidence photos** from its case file. [my emphasis]

They also had the ATF case file, describing more about the gun purchase.

The prosecution also produced an ATF case file that has additional information about the firearm and

statements about its purchase.

They had excerpts from Hunter Biden's book. There's no indication whether those excerpts include the multiple passages that explain why any digital evidence from 2018 would pose some evidentiary challenges. Indeed, when I asked about one of those challenges in December, Weiss' spox had no explanation for it.

But there are three things David Weiss only sought after indicting the case – and so over a year after Devlin's sources got him to publish that there was sufficient evidence to charge Hunter Biden.

Sometime in October, the month *after* the indictment, they sent the firearm for the first time to an FBI lab to test the residue on the pouch in which the gun was found; the residue tested positive for cocaine. The photos in the local case file are important, because the purported reason an FBI agent accessed the gun in October 2023, the month after the indictment, was to take photos of it.

In 2023, FBI investigators pulled sealed evidence from the state police vault **to take photographs of the defendant's firearm**. After opening the evidence, FBI investigators observed a white powdery substance on the defendant's brown leather pouch that had held the defendant's firearm in October 2018. Based on their training and experience, investigators believed that this substance was likely cocaine and that this evidence would corroborate the messages that investigators had obtained which showed the defendant buying and using drugs in October 2018. An FBI chemist subsequently analyzed the residue and determined that it was cocaine. [my emphasis]

But the effort to obtain forensic evidence after

the indictment was half-hearted; investigators did not test to see how long the residue had been in the pouch, nor did they test for other fingerprints.

(a) a brown pouch (obtained by a scavenger from a public trash can) with cocaine residue was in law enforcement's possession for over *five* years, but was not tested until *after the charges* were brought; (b) even then no test was done for fingerprints or to date how long the residue had been there;

Then, sometime after convening a grand jury for tax crimes in November 2023, the second month after the indictment, Weiss obtained,

testimony (in support of finding probable cause) about the firearm obtained from a witness in a grand jury empaneled in the Central District of California in November 2023 after this indictment had already been brought.

Finally, in December 2023, days after Abbe Lowell asked prosecutors for their evidence of Hunter Biden's mindset in October 2018, David Weiss obtained – Weiss claims, for the very first time – a warrant to search Hunter's digital records for such evidence. (Side note: Lowell explains that prosecutors sent him that warrant the day they obtained it, December 4, something Derek Hines didn't think was important to tell Judge Maryellen Noreika.)

According to the warrant return, Special Agent Boyd Pritchard was *still searching* for that evidence when Judge Noreika granted my request to unseal it.

That makes David Weiss' failure, thus far, to actually provide Bates stamps of or describe where they found the messages that prosecutors intend to rely on at trial all the more notable. Even assuming Abbe Lowell's promised motion to suppress that late warrant fails – and that's

likely – there are aspects of the forensics involved that may make it hard to introduce the messages themselves at trial. Plus, it raises questions about whether they actually *found* these texts or simply think they know they exist because they read them in some public news report? And if they saw it in a public news report, were those agents tainted by one of the many hard drive sets that have been tampered with?

You can definitely argue, and I'm sure prosecutors will, that some of this late obtained evidence was opportunistic. For example, they may argue that they really did need new photos of Hunter's gun – photos they did not need to present their case to the grand jury – in advance of trial. They may argue that whatever witness whose November testimony they included in the December warrant was a key tax witness, and they simply locked the person into gun testimony while they had them under oath. That kind of stuff flies under precedents of prosecutorial dickishness all the time.

But, assuming David Weiss' claim to have only obtained a warrant to search Hunter's digital evidence for gun crimes on December 4, 2023, you cannot say they had the evidence to prosecute the crime.

They hadn't looked – not in the over three years they had been combing through Hunter's digital life. Or, if they had looked, they had done so unlawfully.

That's not evidence, as Gary Shapley claims, of slow-walking the investigation. That's evidence that in October 2022, when someone kicked off a scandal that has led to an impeachment inquiry by telling Devlin Barrett what to write down as if it were true, no one planned to take this to trial.

Republicans have spent the 15 months since Devlin's October Surprise screaming about the investigation, based in significant part on the claims made in Devlin's story.

But one key claim in Devlin's story – about how much evidence they had to support the gun charges – has been debunked by David Weiss' three months of scrambling to get more.

This makes Devlin's gun claims the second scandal manufactured by the WaPo that has been at least partially debunked in recent weeks.

And Devlin, with his reporting partner Perry Stein, chased Derek Hines' coke-in-gun stunt; that's precisely the kind of stunt WaPo Dick Pic Sniffers will jump on every time. But they have not reported that that lab report and the warrant to search Hunter's digital evidence for gun evidence *came after the indictment*.

In other words, this is, like Matt Viser's story about the George Bergès testimony, yet another example of WaPo failing to admit that the scandals they manufactured years ago haven't held up to the evidence found since.