

JUDGE NOREIKA JOINS DEREK HINES IN SELECTIVE ADHERENCE TO THE LAWS OF PHYSICS

In addition to making false claims about Abbe Lowell's argument, Derek Hines' successful reply brief excluding the form gun shop employees doctored to cover up their own potential crime made an argument about physics: Anything that happened after Hunter Biden allegedly checked a box could not be relevant to his actions.

II. StarQuest Employees' Actions After the Defendant Completed Form 4473 §A Are Not Relevant

The government intends to call Gordon Cleveland to testify because he is the witness from Starquest who observed the defendant fill out Section A of the form 4473 where the defendant identified himself and stated that he was not an unlawful user of or addicted to a controlled substance. The other two individuals the defendant has subpoenaed, Turner and Palimere, cannot testify to that fact. They, and not Cleveland, were involved in adding "DE VEHICLE REGISTRATION" to the form more than two years after the defendant filled it out. Palimere exchanged text messages, again two years after the events that are the subject of the indictment, that indicate a bias against the defendant. The addition of "DE VEHICLE REGISTRATION," and Palimere's political views are sideshows that the defendant is attempting to inject into the trial and are irrelevant. The government does not intend to call either Turner or Palimere because they

lack first-hand knowledge of the defendant's actions. Their addition of "DE VEHICLE REGISTRATION" to the form after the defendant filled it out does not have "any tendency to make" those two facts, which are "fact[s] of consequence in determining" the charges—that he filled it out and that he said he wasn't an unlawful user of or addicted to a controlled substance—more or less probative. F.R.E. 401. Therefore, their testimony on the addition of "DE Vehicle Registration" to the form, years after the defendant's conduct occurred, is irrelevant and should be excluded.

[snip]

Whatever action was taken after the fact with respect to the form is immaterial.

They adopted exactly the opposite approach with communications regarding drug use. Abbe Lowell had tried to exclude the communications – including those after Keith Ablow's Ketamine treatment made Hunter's addiction worse – because they were sent so long after the gun purchase and disposal.

But prosecutors argued that communications (and photos and videos) from months after the gun was disposed are somehow proof about what happened in October.

The defendant objects to the messages in Rows 214-292 in the government's 1006 Summary Chart as cumulative and occurring subsequent to the defendant's gun purchase and therefore prejudicial under Rule 403.

The redacted message in Row 215 – "that's a line brighter than throwing my gun in a full trash can in a busy grocery store and then some kid blows his sisters head off and you go to prison for the rest of your life" – is an admission regarding the gun which was

made by the defendant to Witness 3 and therefore admissible under F.R.E. 801(d)(2).

With respect to Row 214 and Rows 216-292, these are admissible under Rules 401 and 402 as probative of his active addiction. In Chapter 11 of his book, the defendant admitted that he was actively addicted to crack cocaine between 2015 and 2019. See Government's Motion to Admit Portions of Defendant's Book and Audiobook and Motion in Limine to Exclude use of Self-Serving Statements (ECF 119) and Ex. 1 attached thereto. The messages in Row 214 and 216-292 are relevant because they show that the defendant's statement in his book was accurate and indeed his addiction continued into 2019, without disruption. The messages have a tendency to make the fact that he was an addict and user more probable than it would be without the messages. Fed. R. Evid. 401(a), 402. Moreover, the fact that he was addicted to crack between the fall of 2016 and the spring of 2019 is a fact of consequence relevant to all three charges in the indictment. Fed. R. Evid. 401(b); see United States v. Corona, 849 F.2d 562 (11th Cir. 1988) (abrogated on other grounds) (evidence of social use of cocaine and admissions during treatment over 2.5 year period is sufficient to sustain conviction). His admissions in his messages have probative value which is not substantially outweighed by a danger of unfair prejudice or other issues under Fed. R. Evid. 403.

Note, as I said here, I think the government is right about Row 215.

And Judge Noreika bought that argument too, deciding to let prosecutors waste hours of jurors' time hearing messages about buying drugs

that date to long after the time Hunter owned the gun.

THE COURT: Okay. Defendant has objected to a number of the government's objections, first, rows 214 to 292 of the government's summary chart, Exhibit 18. Those objections are overruled.

Row 215 is a message from the defendant about the disposal of the gun in a trash can in a grocery store, it is an admission and admissible under Rule 801(d)(2). Rows 214 and 216 through 292 are messages probative of defendant's drug addiction. Although the messages are dated after the date defendant bought the gun, they are not being offered in isolation but rather with other evidence of his addiction before, during, and after the time he purchased the gun. They are circumstantial evidence as to whether he was an unlawful user of, or addicted to any controlled substance when he purchased and possessed the firearm and so they are admissible under rules 401 and 402.

Next, we have a series of photos or videos marked as Exhibits 18C through F. Those objections are also overruled. The primary objection to those is they are dated after October of 2018, for the same reasons I allowed the text, I will also allow those exhibits. They are circumstantial evidence of defendant's addiction and relevant and admissible.

As to Exhibit 18C, which defendant also objects to as it shows him unclothed, the clip is redacted so that it only shows him from the chest up, so I will not exclude it on that basis.

Similarly, Judge Noreika sustained the government's objections to virtually all context Lowell had tried to include from the book.

She also seemingly *expanded* the scope of her ruling on the gun shop actions, prohibiting Lowell from raising *anything* the gun shop employees did wrong, which I'll return to.

Noreika's waste of jurors time may actually work against the prosecutors: Lowell had just a few moments of cross examination regarding all this evidence at the end of today; he started by pointing out that most of the evidence submitted was long after the alleged crimes. I wonder whether jurors will fail to see some really damning texts from the period he owned the gun for the forest of texts that came long afterwards.