

LEO WISE MAKES EXCUSES FOR THE REAMS OF EVIDENCE FROM PERIODS HUNTER DIDN'T OWN A GUN

If Hunter Biden's prosecutors, Leo Wise and Derek Hines, fail to win a conviction on Count Three, the easiest charge to prove, it will be because of their own hubris, their decision to overwhelm the defendant with evidence of his four years of addiction, most of it from times when he did not own a gun, rather than simply present the very good circumstantial evidence showing he remained addicted, he continued to use crack, when he did own the gun.

Over 45 minutes into Wise's closing argument, he laid out succinctly that circumstantial evidence, including – as I predicted – analogizing the state of Hunter's truck before and after he used it to snow falling overnight.

What do we know specifically about that month of October. You see on the screen those drug messages on the 13th and the 14th. You see the addiction messages depicted on the 15th and the 23rd. You see the meeting messages on the 10th and the 11th, the day before he bought the gun on the 12th, and you see on the 23rd both addiction messages and drug remnants and drug paraphernalia recovered by Hallie Biden in the truck. That's a lot of evidence of drug use and addiction in the month of October. It is evidence beyond a reasonable doubt.

And what else do we see in October? We see that persistent cash withdraws, hundreds and thousands of dollars every day.

[snip]

And if you compare what Naomi Biden said that she returned the truck to her father clean on October 19th, 2018, that there were no drug remnants in it and there was no drug paraphernalia in it, to Hallie Biden's testimony that she searched the truck on October 23rd, just a few days later, that she found drug remnants. Remember, the way she testified what a drug remnant is, is when you break pieces, smaller pieces of crack off a larger rock, a lot of it falls and breaks off, that's what a remnant is, and that's what Hallie Biden saw in that truck on October the 23rd, and she also found drug paraphernalia.

So what does that mean? What does a clean truck with no drug remnants and no drug paraphernalia on October 19th, as in the testimony of the defendant's own daughter, and then a truck with drug remnants and drug paraphernalia on the October the 23rd, what does that mean?

It means the defendant used crack in the truck between October 15th, 2018, and October 23, 2018, October 19th, when he got it back. Now nobody saw it, right? But you heard Her Honor instruct you that we rely on circumstantial evidence just as much as we rely on direct evidence. And this is circumstantial evidence beyond a reasonable doubt that he used drugs in that truck in that period.

It's like if you go to bed at night in the winter and there is no snow on the ground, and you wake up the next morning and there is snow on the ground, you know it snowed.

But before he got there, in his very first words when presenting his case, he dismissed the Bidens, Hunter's supporters in the courtroom, whom he had forced to relive the pain of

providing an addict unconditional love.

MR. WISE: All of this is not evidence. The people sitting in the gallery are not evidence. You may recognize some of them from the news or from the community. In the course of this trial, you may have looked at them and they may have looked at you. You may have seen them reacting to the testimony or the photographs, or something that one of the lawyers said. But respectfully, none of that matters.

And then, like the lady that doth protest too much, he invented a reason why he had to do that, why he had to show the jury evidence of Hunter's addiction from the periods he didn't own a gun instead of focusing on the period he did.

In opening, Mr. Lowell said the prosecutors plan to call witness after witness who will tell you, and they plan to show you dozens of e-mails or texts which reference what Hunter does not dispute. He had abused alcohol since he was a teenager, and drugs as an adult. The defendant does dispute it. He pleaded not guilty to the charges, which is his right. And what Mr. Lowell says isn't evidence. The fact that he said the defendant doesn't dispute his drug use isn't a stipulation to it. You heard Mr. Hines read the stipulations. They're Exhibit 43. None of them are that the defendant admits he used drugs as an adult. So the United States had to prove it. And that's why we had to call witnesses, and show you photographs and text messages, and play parts of the nonfiction book that the defendant wrote and read. All of which establishes, beyond a reasonable doubt, that the defendant used crack and was addicted to crack, and that he knew he used crack and was addicted to it during the

relevant time period.

To be clear the evidence was personal, it was ugly, and it was overwhelming. It was also absolutely necessary. There is no other way to prove the use of drugs or addiction to drugs than through the kind of evidence that you saw.

[snip]

And that is because as the instruction provides, an inference that a person was a user of a controlled substance may be drawn from evidence of a pattern of use or possession of a controlled substance that reasonably covers the time the firearm was possessed. That's why we introduced evidence from 2015 to 2019. In other words, before, during, and after the time when the defendant bought the gun and when he possessed it, because that establishes the pattern of use or possession of a controlled substance that reasonably covers the time that the firearm was possessed.

[snip]

And again, the evidence and the reason it was introduced from 2015 to '19 shows the defendant habitually used a controlled substance. It isn't something that started the day before he bought and then possessed the gun, or the week before, or the month before, it started years before and it continued for months thereafter. All of that is part of the pattern of use.

[snip]

Now I would like to turn to the evidence of a pattern of use or possession of a controlled substance that reasonably covers the time the firearm was possessed, including October 12th. First, you see the defendant's own words and messages from 2018 and 2019, a year

worth of messages from the spring of 2018 to the spring of 2019.

[snip]

We see messages in November 18th where he's buying. We see addiction messages in 2018. We see both drug messages and addiction messages later in December of 2018, including images. And we see messages in 2019. And in February of 2019. And in March of 2019.

We don't just have his messages from the time, although I submit that would be enough to convict. We also have his own words in his memoir describing buying and using drugs during that whole period from 2015 to 2019, four years, what he called four years of active addiction, and how he relapsed after numerous attempts at rehab, including after The View, the rehab center he went to for about a week late in August of 2018 in California.

Wise even made the grotesque argument that if only Hunter hadn't gone to rehab, he might make the argument that he didn't know he was an addict.

Maybe if he had never been to rehab, he could argue that he didn't know he was an addict when he bought the gun on October the 12th, but he had been to rehab over and over again, and he kept going to rehab, which evidences that he knew he was – he had an addiction when he bought and possessed the gun.

The argument is inadequate on the law, because it sidesteps his obligation to show Hunter's mindset at the moment he bought a gun (something he barely attempted more generally). But it is as obscene from a policy perspective as this prosecution is: because it punishes someone for the effort to get clean.

The hubris may undermine their case for one of two reasons.

Prosecutors had shown the jury what Hunter's purchase and use of crack looked like, and then failed to show the same kind of evidence for the 11 days he owned a gun. The sheer overkill of the evidence they presented from different times made the very strong circumstantial evidence they had for the period that mattered look thin, at least to me. As Lowell argued throughout the trial and again in close: the book, the comms, and Zoe Kestan's pictures all show explicit evidence of drug use. But Kestan's picture from September 2018, between the time Hunter went to rehab and the time he bought a gun, is about the only one that doesn't show drug paraphernalia. And none of the comms the DEA guy reviewed and none of the drug purchases captured in the comms and none of the descriptions of debauchery in the book took place in October 2018.

And more importantly, the overkill may harm prosecutors' case because it was cruel. Jurors aren't supposed to nullify the case before them – that's what Wise seemed to be attempting to say when he dismissed the Bidens because they are Bidens (something that should have been prohibited by the motion in limine they got Judge Noreika to approve that barred Hunter's team from presenting evidence about how the gun shop had treated Joe Biden's kid differently because they wanted him out of the store).

The Bidens are Bidens.

But in that court room, they were also precisely what about half the jury is: family members of an addict.

And there's a possibility that at least some of the jurors will refuse to join in Wise's cruelty.

Update: In his close, Abbe Lowell noted that of the hour prosecutors spent playing audio of Hunter's book, 40 minutes was from 2016 and 2017, and most of the rest was from the first half of 2018.

Do you recall they spent 40 minutes on 2016 and 2017. They spent 20 minutes plus on the first half of 2018. And then some minutes following in 2019. But did you hear even a minute about any of the events that happened in this period of time in 2018, when he came back from Los Angeles to be back home?

In response, Derek Hines suggested that they could have provided more and better evidence by playing more than the hour they played.

Now, Mr. Lowell suggested that it was unfair and that we were playing portions of the defendant's book in this trial. We played about an hour of audio in this case. And he made two different arguments regarding that audio, first of all, he said we picked and choose out of context what we were playing. Well we played a full hour, would you like to have heard more of that audio book?