

“CASE CHANGING:” THE 7-ELEVEN MESSAGES

It can't be overstated the degree to which calling Naomi Biden to testify backfired on Hunter Biden.

Contrary to the claims of the Tiger Beat reporters at the courthouse, she wasn't called to “humanize” her father. Rather, they intended to rebut a claim that Hallie Biden had made about the truck: that the console lock had been broken.

Q. So now, your dad has the truck, when you gave your dad the truck, I want you to describe the inside of it. Does the truck have a console?

A. Yes.

Q. And underneath the console, what's there?

A. It's like a safe.

Q. And meaning it's a steel or metal object?

A. Yeah.

Q. Does it have a lock or does it not have a lock?

A. It has a lock.

Q. And when you and Peter had it at the period of time in October, was the safe working?

A. Yes.

Q. Was it broken?

A. No.

Even that backfired. Leo Wise used Naomi's testimony about a clean truck as circumstantial evidence that between October 19 and October 23,

Hunter did crack.

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.

On cross, Naomi's claims that her father seemed hopeful in this period quickly fell flat, as prosecutors showed her her own texts frowning that she didn't get to spend much time with him while he was in NYC.

Q. Well, if we go to the next page, did you send your father a series of texts where you told him that you were in Brooklyn, but that you could have Peter meet him and trade, then did you ask your father if he had seen Peter and did he ask if – and did you ask if you would get to see him, in other words, your dad?

A. Yes.

Q. And was your dad's response no? This is on page 1719? A. I think he's saying no to did he call.

Q. Your next message then is "so no see you?!"

A. Yeah.

Q. And then you said, it looks like you did sort of an unhappy face, and the next text? A. Are you asking?

Q. Yes.

A. Yes.

Q. And then the next one is "I'm really sorry, dad, I can't take this." And then "I don't know what to say, I just miss you so much, I just want to hang out with you." Right?

A. Yeah.

That would have been enough in any case to undermine any defense claim that Hunter had cleaned up in the period he owned the gun.

But then, at 9:30 the night before closing arguments, after originally saying they wouldn't put on a rebuttal case, prosecutors called Abbe Lowell to say they needed to do so because Naomi misspoke about what day her father had arrived in NYC, the 15th rather than the 17th (actually, she responded in the affirmative when Lowell asked her whether, "When he drove it up, do you recall about what day it was in October, was that October 15th?").

MR. LOWELL: Last night at 9:30 or whatever after the government said they would not have a rebuttal case, they wrote while preparing for closing argument, and reviewing transcript this evening, we realized that Naomi Biden provided inaccurate testimony about the date when the defendant traveled to New

York. That's what they wrote, that's the need for rebuttal. I understand, we can address that.

What they have done after that late at night was to provide us a new set of texts, forty-two of them, to propose in between before he got to New York where he was, who he was talking with, and what he was doing, which includes references that could be to try to contact or have people that were contacting him for possible drug use, that was not put in their case-in-chief. If what they said, and this is rebuttal, this is a rebuttal case as to where he was or whether Naomi was wrong, then that's what the rebuttal is. That doesn't need forty-two texts that includes all kinds ever other language.

We would be prepared to stipulate that either he you heard evidence from Naomi Biden that he arrived and was there the 15th, that's not correct it was a few days later, or we can stipulate as to whether he got there, on or we can stipulate as to what locations he was, but then to have forty-two texts of all this other material that they could have proposed is not rebuttal for the proposition, which would be proper rebuttal, and if it was even remotely relevant to that which was the date, then it would be prejudicial beyond any relevance.

To prove that Naomi got the date wrong – to which Hunter's team was happy to stipulate – prosecutors said that justified submitting 42 new texts as evidence, texts which had not been provided as a potential exhibit before, texts the defense received the morning of the hearing.

Prosecutors used the date discrepancy to submit a bunch of texts showing Hunter had been arranging meetings at a 7-Eleven.

MR. HINES: The first thing I'll say is all of these text messages do link to our proof that he was still in Delaware on October 15th, but nonetheless our rebuttal case is not limited, there is no rule of evidence that limits a rebuttal case to exactly the words that the defense witness testified to.

What I'll say on how it relates to the 15th is that we have location information showing him at a 7-Eleven on October 14th, 15th and 16th, I believe those are the dates that's reflected in the summary chart.

And location information and a photograph is just that, it's location information, it does not identify whether the person themselves was actually necessarily at that location because the photograph shows a geolocation, it could have been someone else's photograph. So the other messages that we included are all messages, et cetera, that show the defendant did frequent a 7-Eleven, they are just messages from October 9th through that date when he left the area showing that he was communicating with other individuals to meet at a 7-Eleven.

By doing so, just before closing arguments (and giving Lowell no time to prepare), prosecutors submitted evidence of Hunter trying to meet a guy named Q at a 7-Eleven.

MESSAGE	
SMS 2018-10-10 17:13:07 (UTC) [3] Sender: (302) 244-2168 ((302) 244-2168) Participants: (302) 244-2168 ((302) 244-2168), Self (e:)	
You want the same	
SMS 2018-10-11 07:17:52 (UTC) [3] Sender: (302) 244-2168 ((302) 244-2168) Participants: (302) 244-2168 ((302) 244-2168), Self (e:)	
Its. Q. Im. At. 711. Now	
SMS 2018-10-11 16:53:26 (UTC) [14] Sender: (302) 525-9246 ((302) 525-9246) Participants: (302) 525-9246 ((302) 525-9246), Self (e:)	
Yooo. Its. Q:) hoping. My texts. Reached. Ya. Re. Lost. Cell. This. Number. Is. A contact. # for. Me. Feel. Free. To. Hit. Me. Back. ..	
	SMS [14] 2018-10-11 18:41:51 (UTC) Sender: Self (e:) Participants: (302) 525-9246 ((302) 525-9246), Self (e:) Meet me 7/11 at 3

As Lowell described when he vigorously objected, showing texts from October 10 would not rebut Naomi's perspective of what Hunter looked like on October 19; it was case changing.

MR. LOWELL: I am going to be repetitive, this is a case changing event and it shouldn't be a case changing event where they shoehorn in this. What is relevant to rebut her perception of him on the 19th can be what? If he didn't use drugs two weeks before does that rebut her perception? Six days before we know when he is on crack. He has to do it every twenty minutes according to the testimony. There is a disconnect, there is an extraordinary disconnect from her saying I saw him, maybe she wants to look at him in blinders, maybe she doesn't say what he does, but that's not —

Particularly given Hunter's reference to meeting dealers at 7-Eleven in his memoir, this was some of the prosecution's most probative evidence that he had bought drugs immediately before buying the gun. Indeed, they were among the few things Leo Wise mentioned in laying out the actual circumstantial evidence he was doing

drugs that week.

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. [my emphasis]

Noreika's decision to allow prosecutors to submit messages from a week before Naomi saw her father to rebut her claim that he looked fine is another of the decisions Lowell will include in any potential appeal.

It's also a decision, and a development, that hasn't been fully explained.

There's a lot of armchair punditry about whether Hunter should have pled guilty (most of which misrepresents what happened to the plea deal, though this is an exception). But few understand how prosecutors used the mere fact that Naomi testified as an excuse to introduce texts that should have been in their case-in-chief.