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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	VOLUME 6
	)	ROUGH DRAFT
	)	CRIMINAL ACTION
v.	)	NO. 23cr61 (MN)
	)	
ROBERT HUNTER BIDEN,	)	
	)	
Defendant.	)	

Monday, June 10, 2024  
8:15 a.m.  
Jury Trial

Courtroom 4A  
844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA  
United States District Court Judge

APPEARANCES:

SPECIAL COUNSEL'S OFFICE  
BY: DEREK E. HINES, ESQ.  
BY: LEO WISE, ESQ.

Counsel for the  
United States of America

1 APPEARANCES CONTINUED:  
2

3 DALTON & ASSOCIATES, P.A.  
4 BY: BARTHOLOMEW J. DALTON, ESQ.  
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6 -and-

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9 BY: DAVID KOLANSKY, ESQ.  
10 BY: ISABELLA OISHI, ESQ.

11 Counsel for the Defendant  
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07:49:29 14

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THE COURT: All right. Good morning, everyone.

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Please be seated. Okay. So I have the written objections

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and a proposed addition to the jury instructions. I thought

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we could go -- let's go through them so that I can figure

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out what -- I know the government has proposed a few

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changes, I want to find out if the defendant has any

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objections.

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So let me start with defendants proposed

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additions and changes. The theory of the defense

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instruction I will not add, that is argument and I don't

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think it's appropriate in instructions that I give to the

08:17:58 1 jury. With respect to reasonable doubt, we have had this  
08:18:03 2 before in connection with the preliminary instructions, and  
08:18:08 3 I am going to go with the current version of reasonable  
08:18:12 4 doubt that we have, which is consistent with the Third  
08:18:19 5 Circuit's proposed -- Third Circuit's model instruction.

08:18:30 6 With respect to impeachment of defendant prior  
08:18:36 7 inconsistent statement, I agree with you, that was just  
08:18:40 8 weird, but it was in there so I italicized it. Can we take  
08:18:44 9 that out?

08:18:44 10 MR. LOWELL: Yes.

08:18:45 11 THE COURT: So we're going to remove that one.  
08:18:50 12 Materially defined, flat out wrong according to the  
08:18:54 13 defendant, but it is essentially the Third Circuit model  
08:19:00 14 instructions, so what is flat out wrong?

08:19:07 15 MR. LOWELL: In the material that we provided,  
08:19:11 16 from the --

08:19:12 17 THE COURT: There is no case cited in what you  
08:19:15 18 provided to me, so if you're telling me it's contrary to  
08:19:18 19 law, it would be nice to have a case.

08:19:20 20 MR. LOWELL: I'm sorry, it's contrary to --  
08:19:23 21 that's -- that reflects back to our 29 motion on the Second  
08:19:28 22 Amendment that BROADENS the definitions we believe that the  
08:19:31 23 law that makes that improper is that motion for the 29  
08:19:36 24 Second Amendment, it makes it a much broader category, which  
08:19:41 25 reflects back to that motion itself, that's what we're

08:19:44 1 referring to.

08:19:44 2 THE COURT: Okay. So your objection is noted  
08:19:46 3 and overruled.

08:19:48 4 Unlawful user of a controlled substance, the  
08:19:52 5 definition proposed, we've had this one before and your  
08:20:00 6 objections are preserved, but I am going to overrule that  
08:20:06 7 one.

08:20:09 8 I think that the Third Circuit did cite to  
08:20:21 9 eighth circuit precedent with respect to that and the eighth  
08:20:28 10 circuit has -- and the eighth circuit has said that you  
08:20:35 11 address the constitutional vagueness issue with respect to  
08:20:38 12 the timing by saying it needs to be contemporaneous around  
08:20:42 13 that time, so I am going to overrule that objection.

08:20:45 14 Knowing possession. I am going to overrule.  
08:20:54 15 Again, I think this is the model instruction, while I'm not  
08:21:02 16 bound to it, at least currently it appears to be an accurate  
08:21:10 17 state of the law in this circuit.

08:21:19 18 And other objections. Oh, not including the  
08:21:25 19 knowledge of a user or good faith, I think that those are  
08:21:29 20 included in the Third Circuit as said I don't need to  
08:21:33 21 include, for example, good faith when it would be redundant  
08:21:37 22 of other instructions, which I think it is here.

08:21:40 23 All right. So those are the defendant's  
08:21:43 24 proposed changes and objections. The stipulations and fact,  
08:21:52 25 government proposes some additional stipulations or to

08:21:57 1 change, the language is changed of the stipulations.

08:22:01 2 Mr. Lowell, your position.

08:22:01 3 MR. LOWELL: I only got these right before I  
08:22:03 4 came back.

08:22:04 5 THE COURT: Can you guys just take a look?

08:22:06 6 MR. LOWELL: That was on page 1 and if the  
08:22:08 7 government would explain to me what difference it was, that  
08:22:11 8 would probably expedite.

08:22:13 9 MR. HINES: In our proposed jury instructions,  
08:22:15 10 which the court utilized in the proposed final instructions  
08:22:19 11 which included a draft version of the instructions, this  
08:22:23 12 represents the entered into evidence stipulation which was  
08:22:25 13 entered into trial, which the language was slightly tweaked  
08:22:28 14 from what we had initially proposed to the court.

08:22:31 15 MR. LOWELL: That one I have no objection.

08:22:33 16 THE COURT: Okay. So we will include  
08:22:35 17 government's proposed instruction on stipulations and  
08:22:38 18 replace the stipulations in the draft.

08:22:44 19 Credibility of witness, immunized witnesses. I  
08:22:49 20 know that there was testimony that Ms. Kestan was immunized,  
08:22:53 21 and I remember you saying that in opening, I don't remember  
08:22:56 22 that that's in evidence.

08:22:57 23 MR. LOWELL: I asked her, judge.

08:22:59 24 THE COURT: You did.

08:22:59 25 MR. LOWELL: Yes.

08:23:00 1 THE COURT: All right. So with that,  
08:23:02 2 Mr. Lowell, do you have any thoughts, objections?

08:23:09 3 MR. LOWELL: I think the difference is just in  
08:23:11 4 that first sentence, putting in the names of the people.

08:23:14 5 THE COURT: Yes. So that's what he did. But  
08:23:18 6 there were like multiple paragraphs -- oh, I see, so we take  
08:23:24 7 out -- all we're going to do is just put in the first  
08:23:30 8 sentence, add the two names. So we're using the not against  
08:23:39 9 her in a criminal case as opposed to not prosecuted.

08:23:44 10 MR. HINES: Correct. That was the, in terms of  
08:23:46 11 the immunity for both, Ms. Biden and Ms. Kestan.

08:23:50 12 THE COURT: So Mr. Lowell, any objection to  
08:23:53 13 using the language proposed by the government?

08:23:56 14 MR. LOWELL: The difference is in the draft that  
08:23:58 15 has received a promise from the government that her  
08:24:00 16 testimony will not be used, and here it says the promise  
08:24:04 17 from the government is her testimony will not be used. I  
08:24:07 18 think the only difference is that we've added the two names,  
08:24:10 19 otherwise --

08:24:11 20 THE COURT: And I'm asking you if you're okay  
08:24:14 21 with it.

08:24:14 22 MR. LOWELL: Of course. Those are the two, I'm  
08:24:16 23 sorry, I thought there was a change.

08:24:18 24 THE COURT: No, no, it's fine.

08:24:19 25 Credibility of witnesses, testimony of addict or

08:24:23 1 substance abuser, the government said nobody who testified  
08:24:29 2 was addicted to drugs or using drugs when the events took  
08:24:33 3 place, and so the government proposes to omit that.

08:24:39 4 MR. LOWELL: And I agree with the government,  
08:24:41 5 except probably with one fewer person, because that includes  
08:24:45 6 Mr. Biden in that, having said that I don't think there is  
08:24:48 7 any testimony that any of the witnesses were so, so that  
08:24:51 8 should be struck.

08:24:53 9 THE COURT: Okay. So we will strike number  
08:24:55 10 eight.

08:24:55 11 Then we have defendant's choice not to testify  
08:25:02 12 or present evidence.

08:25:05 13 MR. LOWELL: So that one just needs to say  
08:25:08 14 testify.

08:25:08 15 THE COURT: Okay. And you're fine with the rest  
08:25:10 16 of it?

08:25:12 17 MR. LOWELL: Let me see for a moment. Yes.

08:25:20 18 THE COURT: Okay. So we will take out did not  
08:25:24 19 present evidence in both of those places, leave in did not  
08:25:29 20 testify, remove the brackets, and remove the italics. I  
08:25:37 21 think that should do it. Okay.

08:25:39 22 So then we remove ten, defendant's testimony.  
08:25:49 23 We remove 11, impeachment of defendant. And the next  
08:26:04 24 objection or addition that the government has is that the  
08:26:10 25 parties have stipulated and agreed that StarQuest Shooters



08:26:15 1 and Survival Supply was a licensed dealer, you should  
08:26:20 2 therefore treat this, this is to page 3 of the government's  
08:26:23 3 submission -- you should therefore treat this fact as having  
08:26:27 4 been proved, you are not required to do so, however, because  
08:26:30 5 you are the sole judge of the facts.

08:26:34 6 MR. LOWELL: Yes.

08:26:35 7 THE COURT: Are you fine with that?

08:26:38 8 MR. LOWELL: Yes, that's fine.

08:26:40 9 THE COURT: So we'll make that change.

08:26:47 10 MR. LOWELL: Sorry, I'm now confused, on their  
08:26:53 11 page 4, versus --

08:26:56 12 THE COURT: I haven't gotten there yet, okay.

08:26:59 13 MR. LOWELL: No, no, I wasn't there, I was on  
08:27:02 14 page 3.

08:27:02 15 THE COURT: Okay.

08:27:03 16 MR. LOWELL: We were just talking about which  
08:27:10 17 Roman numeral were you just referring to, please?

08:27:14 18 THE COURT: 14.

08:27:15 19 MR. LOWELL: Sorry. One moment, please.

08:27:29 20 Yes, that's okay.

08:27:30 21 THE COURT: Thank you.

08:27:32 22 MR. HINES: Your Honor, with respect to 14, just  
08:27:35 23 to shortcut something -- I'm sorry, 13.

08:27:41 24 MR. LOWELL: 13?

08:27:43 25 MR. HINES: Sorry, my apologies, it's 18, I'll



08:27:46 1 wait a second, Your Honor.

08:27:48 2 THE COURT: Okay. The Roman numerals are  
08:27:52 3 killing us all.

08:27:54 4 Okay. 18, the government's proposed  
08:27:59 5 instruction, can you tell me what you did?

08:28:02 6 MR. HINES: So what we intended to do was just  
08:28:06 7 really add the last sentence, which is that stipulation  
08:28:09 8 language that we had referenced that the jury can treat this  
08:28:13 9 fact as having been proved, they're not required to do so.  
08:28:16 10 So the Court could ignore what we put up until that last  
08:28:20 11 sentence, which appears to be put in there in error.

08:28:23 12 MR. LOWELL: When you say that last sentence,  
08:28:25 13 that last sentence on your submission?

08:28:28 14 MR. HINES: On our submission, number 18, which  
08:28:32 15 is page three into four, where it's just asking that the  
08:28:35 16 Court include the last two sentences, you should therefore  
08:28:38 17 treat this fact as having been proved, you're not required  
08:28:41 18 to do so however, since you are the sole judges of the  
08:28:45 19 facts.

08:28:48 20 THE COURT: All right. It's the same language  
08:28:50 21 that we used with respect to the other stipulation.

08:28:53 22 MR. LOWELL: Yes, ma'am, I'm just asking, is  
08:28:56 23 that on your proposed instructions where it was highlighted  
08:28:59 24 instruction number 13, these say it has the same definition  
08:29:06 25 as provided in that definition and then state what you said

08:29:09 1 before or do you repeat 13, I'm just not sure what that  
08:29:14 2 means, you had highlighted that.

08:29:16 3 THE COURT: That's because I want to be sure if  
08:29:19 4 the numbering changed we be sure to change the numbering.  
08:29:23 5 All I'm going to say is that's the same definition provided  
08:29:26 6 in whatever the instruction did it, so I don't have to sit  
08:29:30 7 here and use extra words.

08:29:32 8 MR. LOWELL: I agree with that.

08:29:33 9 THE COURT: Okay, so we'll just make sure that  
08:29:34 10 number is correct, that's why it's highlighted. But the  
08:29:37 11 addition that's being proposed by the government is that we  
08:29:40 12 add, if you look at theirs, page 4.

08:29:43 13 MR. LOWELL: Right.

08:29:43 14 THE COURT: The last two sentences, which are  
08:29:44 15 the same two sentences we used with the prior stipulation.

08:29:48 16 MR. LOWELL: Correct.

08:29:48 17 THE COURT: You're fine with those.

08:29:51 18 MR. LOWELL: I am.

08:29:52 19 THE COURT: Thank you. 23. Interstate  
08:29:58 20 commerce.

08:30:04 21 MR. HINES: This is again just the same --

08:30:07 22 THE COURT: Add those two sentences.

08:30:08 23 MR. HINES: Yes.

08:30:09 24 MR. LOWELL: Again, the same, that's fine.

08:30:11 25 THE COURT: Okay. Thank you.

08:30:15 1 And then with respect to the 25, which the  
08:30:24 2 government called 14, but I know you meant 25, so what I  
08:30:31 3 didn't understand was, I mean, I always give people  
08:30:35 4 exhibits, I mean, not a gun, but I always give them the  
08:30:39 5 exhibits. What is this, you can ask me for an exhibit?

08:30:44 6 MR. HINES: So our understanding is the practice  
08:30:46 7 is not to allow things like firearms, ammunition, drug  
08:30:50 8 evidence to go back with the jury. That is essentially  
08:30:53 9 almost all of the physical exhibits. Certainly documents,  
08:30:56 10 evidence that's been introduced in paper format can go back,  
08:31:00 11 but there are limited physical evidentiary items, that's off  
08:31:03 12 the top of my head, it's the gun, the ammunition, the speed  
08:31:08 13 loader, the brown leather pouch.

08:31:11 14 THE COURT: Right. But doesn't this seem like  
08:31:13 15 we're saying that they're not getting any exhibits? If you  
08:31:17 16 want to see any of the exhibits, you mean, we could say any  
08:31:20 17 of the physical exhibits, but this is sort of weird, it  
08:31:25 18 sounds like they're just going to go back there and look at  
08:31:29 19 each other.

08:31:29 20 MR. HINES: I agree we can make that change.

08:31:32 21 MR. LOWELL: The language that you highlighted I  
08:31:34 22 thought worked before it was attempted to be changed. If  
08:31:37 23 you want to see any of the exhibits that were admitted in  
08:31:42 24 evidence, and if I can I will have those exhibits provided,  
08:31:45 25 that's what you need to say and we understand that language

08:31:48 1 includes physical ones, but I don't think you need to say  
08:31:51 2 more than what you had proposed.

08:31:52 3 THE COURT: Just so that we're clear, I'm not  
08:31:55 4 proposing, this subject that the jury will have no exhibits,  
08:31:58 5 that's not my practice. They would have exhibits, but not  
08:32:01 6 the physical exhibits like the gun, and so I think what the  
08:32:06 7 government is proposing is that if they're really desperate  
08:32:11 8 to see the gun and checkout the serial number on it, they  
08:32:16 9 could ask to come back to the courtroom to look at it. Is  
08:32:19 10 that what you're saying?

08:32:20 11 MR. HINES: Exactly. One question I had --

08:32:23 12 THE COURT: I don't know that we actually need  
08:32:24 13 to tell them that, because if we say provided, that's one  
08:32:28 14 way we could provide it, right?

08:32:29 15 MR. HINES: That's fine. For my clarification  
08:32:31 16 with respect to the audio that was played from the audio  
08:32:34 17 book, they obviously have the physical book back there, but  
08:32:37 18 to the extent the jury wants to hear the words again, is  
08:32:40 19 there a mechanism for them the listen to it in the jury room  
08:32:43 20 or do they need to come back out here in the courtroom?

08:32:47 21 THE COURT: They could listen to it in the jury  
08:32:49 22 room.

08:32:49 23 MR. LOWELL: Could you please tell me what your  
08:32:51 24 proposed 29 -- what that will now say?

08:32:54 25 THE COURT: If you want to see any of the

08:32:55 1 physical exhibits that were admitted in evidence, you may  
08:32:58 2 send me a message and then if I can legally do so -- or if  
08:33:02 3 you want to say if you want to see any exhibit you don't  
08:33:05 4 have.

08:33:06 5 MR. LOWELL: So you're going to give them all  
08:33:08 6 the exhibits except --

08:33:09 7 THE COURT: I'm going to give them all the  
08:33:11 8 exhibits except for the ones I can't give them, like the  
08:33:15 9 gun.

08:33:15 10 MR. LOWELL: Okay. I just was confused because  
08:33:17 11 it did say any.

08:33:19 12 THE COURT: That's why it was highlighted  
08:33:20 13 because that's the way you all proposed it to me, and I  
08:33:23 14 didn't understand it, but I didn't want to delete it without  
08:33:27 15 talking to you.

08:33:28 16 MR. LOWELL: Okay, if it's your practice to do  
08:33:29 17 that, we'll follow your practice. Now I understand.

08:33:33 18 THE COURT: Okay. Thank you. So that one we'll  
08:33:36 19 say -- what I am going to say is if you want to see any of  
08:33:41 20 the exhibits that were admitted in evidence that you don't  
08:33:44 21 have, you may send me a message and if I can legally do so,  
08:33:48 22 I will have those exhibits provided.

08:33:54 23 Okay. Is there any objection, proposed addition  
08:34:01 24 that I have not addressed?

08:34:02 25 MR. LOWELL: I'm sorry, you go first.

08:34:04 1 MR. HINES: No, Your Honor.

08:34:04 2 MR. LOWELL: There is a few, judge, that I would  
08:34:06 3 like to bring to your attention if I might.

08:34:09 4 THE COURT: Sure.

08:34:09 5 MR. LOWELL: You skipped over 24, that was in  
08:34:13 6 italics about activities not charged given all the evidence  
08:34:17 7 about drug use in other years, we would suggest that that  
08:34:21 8 was as proposed, we give it.

08:34:23 9 THE COURT: I wasn't sure what that was talking  
08:34:25 10 about, yes, that's fine, we will un-italicize 24.

08:34:29 11 MR. LOWELL: 62. In addition to which,  
08:34:32 12 generally for example on your proposed 27, page 27, that  
08:34:35 13 would be in 25 so -- sorry, Roman numeral 25, there are  
08:34:41 14 occasions where you do this, but on a couple of occasions  
08:34:44 15 here, for example, whenever you use the phrase prove the  
08:34:49 16 defendant, say beyond the reasonable doubt that is the  
08:34:52 17 standard, here you say if the defendant has proved the  
08:34:58 18 defendant guilty beyond a reasonable doubt.

08:35:00 19 MR. HINES: The previous section says that and  
08:35:03 20 this is the Third Circuit model instructions, I don't think  
08:35:06 21 we need to say over and over and over again, it becomes  
08:35:09 22 cumbersome, but in the previous paragraph it says twice  
08:35:13 23 beyond a reasonable doubt.

08:35:14 24 MR. LOWELL: Three words doesn't make it  
08:35:17 25 cumbersome but it's a standard of proof, if you remove it



08:35:21 1 any time the word guilty is, it can then become confusing,  
08:35:25 2 you because it was omitted --

08:35:29 3 THE COURT: I'm sorry, I don't mean to cut you  
08:35:31 4 off but I think you were talking to Mr. Hines and not me.  
08:35:33 5 Is the only place I -- I see it in the second -- I'm sorry,  
08:35:37 6 in the paragraph that begins third, if you decide that the  
08:35:43 7 government has proved the defendant guilty beyond a  
08:35:47 8 reasonable doubt. Is there any other place you want it?

08:35:49 9 MR. LOWELL: I think that's the one I found.

08:35:51 10 THE COURT: So we'll add that.

08:35:54 11 MR. LOWELL: The only other -- and then on the  
08:35:57 12 next page, judge, where you're talking that you can go about  
08:35:59 13 notes, that's slightly different than the preliminary and we  
08:36:03 14 want you to add the sentence that you did in preliminary  
08:36:06 15 here which is -- hold on a second. In the preliminary, you  
08:36:18 16 said your notes are memory aids, they are not evidence. And  
08:36:23 17 it says -- the phrase, in your deliberations do not give  
08:36:27 18 anymore or less weight to the views of a fellow juror just  
08:36:31 19 because a juror did or did not take notes, that was in the  
08:36:34 20 preliminary, that sentence makes sense to clue in this one  
08:36:39 21 as well.

08:36:40 22 MR. HINES: I don't have the preliminary in  
08:36:42 23 front of me but if that tracks the preliminary, then that's  
08:36:45 24 fine.

08:36:45 25 THE COURT: We'll cut and paste it from the



08:36:47 1 preliminary.

08:36:48 2 MR. HINES: Okay.

08:36:50 3 MR. LOWELL: Let me see if there is anything  
08:36:52 4 else.

08:36:52 5 THE COURT: Thank you.

08:36:59 6 MR. LOWELL: I'm sorry, judge.

08:37:09 7 On your proposed 22, unanimity, Roman 22, in the  
08:37:18 8 last paragraph, third line, it reads presently if you  
08:37:23 9 unanimously agree that he was either an unlawful user of a  
08:37:27 10 controlled substance or was addicted to a control substance  
08:37:30 11 or both, you may find the defendant guilty. We ask that you  
08:37:34 12 include and met the other elements as to each count, it  
08:37:38 13 looks like that's the only element that's missing here. Do  
08:37:44 14 you see where I'm referring?

08:37:46 15 THE COURT: Yes.

08:37:46 16 MR. LOWELL: So the phrase would be "and met the  
08:37:49 17 other elements as to each count".

08:37:52 18 MR. HINES: No objection.

08:37:56 19 THE COURT: So in 22, at the end of the -- or in  
08:38:01 20 the middle of the second sentence after "or was both," then  
08:38:12 21 we put "and met the other elements of the offense, you may  
08:38:16 22 find him guilty", right?

08:38:18 23 MR. LOWELL: I would ask to say as to each  
08:38:21 24 count, as to each count.

08:38:22 25 THE COURT: I'm sorry, as to each count.

08:38:24 1 MR. HINES: I think it should say the offense,  
08:38:26 2 because this instruction covers three different counts and  
08:38:29 3 it could create confusion that somehow the elements from  
08:38:32 4 each of the following counts link to the first count, for  
08:38:38 5 example.

08:38:38 6 MR. LOWELL: The opposite I think judge, each  
08:38:41 7 one of them does have a separate one, that's why you have to  
08:38:44 8 say each, because each one is different and it's not saying  
08:38:47 9 each. That can make them understand and meld, we ask them  
08:38:51 10 to say and the other elements of each count.

08:39:37 11 THE COURT: Where I'm getting confused is it  
08:39:40 12 almost sounds like you have to you find that he -- if they  
08:39:49 13 met them for every count to find him guilty, so we need --

08:39:55 14 MR. LOWELL: I'm sorry, this is referring only  
08:39:58 15 to one count, then it can say and met the other elements as  
08:40:03 16 to this count. That's what the government is saying.

08:40:06 17 MR. HINES: I would suggest, Your Honor, that  
08:40:07 18 the sentence could read something like if you unanimously  
08:40:11 19 agree that he was either an unlawful user of a controlled  
08:40:15 20 substance, or was addicted to a controlled substance, or was  
08:40:19 21 both, and met the other elements of the offense, you may  
08:40:22 22 find the defendant guilty of that offense.

08:40:32 23 MR. LOWELL: I prefer each count, but if Your  
08:40:35 24 Honor thinks "of the offense" does it, then that's better  
08:40:39 25 than what it does now for my purposes.

08:40:42 1 THE COURT: We'll make that change. Anything  
08:40:44 2 else?

08:40:44 3 MR. LOWELL: We have not -- I don't know that  
08:40:47 4 the Court has yet provided what will be a verdict form.

08:40:51 5 THE COURT: Oh, I did want to talk about the  
08:40:53 6 verdict form. So the government, it seems like your issue  
08:40:56 7 was knowing in the verdict form. So I guess my question  
08:41:06 8 was, in the indictment, it says knowing. So why are we not  
08:41:13 9 including that in the verdict form?

08:41:16 10 MR. HINES: So knowingly is obviously an element  
08:41:18 11 and the Court is instructing on knowingly, there is a whole  
08:41:22 12 host of other elements.

08:41:24 13 THE COURT: So what happened was I was trying to  
08:41:26 14 put in everything from the indictment and then it became  
08:41:29 15 bigger. So I took that point. But how do we -- what do we  
08:41:40 16 call it in -- so you're saying essentially just use the  
08:41:48 17 terminology that is in the jury instructions?

08:41:55 18 MR. HINES: Just use the terminology that's in  
08:41:57 19 is the statute, the statute doesn't specifically read the  
08:42:00 20 word knowingly, because that's ordinarily the practice that  
08:42:03 21 I have experienced with respect to jury verdict forms, you  
08:42:07 22 don't include the additional terminology as an element in  
08:42:11 23 the verdict form itself because the Court is already  
08:42:14 24 instructing on that element.

08:42:16 25 MR. LOWELL: Yes, but this is the last moment

08:42:18 1 when they have to make a decision, and as Your Honor knows,  
08:42:22 2 knowingly is a very key aspect and it is to each of those  
08:42:27 3 counts and adding a word to remind them as opposed to taking  
08:42:31 4 it out if they may if they just looked at the verdict form  
08:42:34 5 decide it is a different standard is prejudicial and it is  
08:42:38 6 not redundant because it is part of each count as it was  
08:42:41 7 when we proposed it.

08:42:44 8 THE COURT: Right. But then the question is why  
08:42:47 9 aren't we including all of the other elements. And that's  
08:42:50 10 what I was trying -- when I saw yours, I was trying to do  
08:42:53 11 that and went back to the indictment, and I was like well,  
08:43:00 12 the indictment says knowing, but it also says a lot of other  
08:43:06 13 stuff.

08:43:06 14 MR. LOWELL: Well, the other stuff is hardly  
08:43:08 15 contested, whether or not interstate commerce, whether it  
08:43:12 16 was a dealer, so the only one in dispute for all intents and  
08:43:17 17 purposes is this one critical phrase, so I don't think you  
08:43:20 18 have to, especially given the stipulation, include every  
08:43:23 19 other -- almost of every count when the only one between us  
08:43:28 20 and the government being disputed is the one that it lacks.

08:43:32 21 MR. HINES: Your concern would be including the  
08:43:35 22 one element as opposed to the other would lead to the  
08:43:37 23 confusion in the jury when they wonder why there is an  
08:43:43 24 inconsistency between the jury form and the instruction, we  
08:43:45 25 think a general description that's standard that tracks the

08:43:49 1 language of the statute is sufficient, obviously we can  
08:43:52 2 argue knowingly in closing arguments which I expect will be  
08:43:56 3 the focus of both counsel's presentation.

08:44:00 4 MR. LOWELL: I don't want to -- if we're trying  
08:44:08 5 to make sure the jury is not confused and you take out the  
08:44:11 6 critical element, which is at the core of the defense,  
08:44:14 7 you're actually providing more of an ability to make for at  
08:44:17 8 least not confusion, but contradiction.

08:44:19 9 THE COURT: I will leave it with what the  
08:44:21 10 government has, but I will when I talk to them about the  
08:44:24 11 jury verdict form tell them that when they look at these,  
08:44:28 12 they have to go back and look at the instructions that were  
08:44:32 13 provided for each count. The other thing on the jury  
08:44:36 14 verdict form, we usually have all the jurors sign. Any  
08:44:40 15 objections to that?

08:44:41 16 MR. HINES: No, Your Honor.

08:44:42 17 MR. LOWELL: You said it's the foreperson. This  
08:44:51 18 says presiding jurors. So what would that say?

08:44:55 19 THE COURT: It would say once you have a  
08:44:58 20 verdict, everybody sign it, I mean, we have spaces for --

08:45:02 21 MR. LOWELL: That's what I meant.

08:45:03 22 THE COURT: We have foreperson plus 11 spaces.

08:45:06 23 MR. LOWELL: Got it. If that's the Court's  
08:45:08 24 practice, again I'm not going to change something that you  
08:45:11 25 always do, unless --

08:45:13 1 THE COURT: Unless you tell me it's flat out  
08:45:16 2 wrong and then I may reconsider.

08:45:17 3 MR. LOWELL: But that's not flat out wrong.

08:45:20 4 THE COURT: Thank you.

08:45:21 5 Okay. All right. Anything else?

08:45:31 6 MR. HINES: Nothing on jury instructions.

08:45:33 7 MR. LOWELL: Nothing on jury instructions, but  
08:45:35 8 we do have another issue.

08:45:38 9 (Side-bar discussion:)

08:53:21 10 MR. LOWELL: Last night at 9:30 or whatever  
08:53:21 11 after the government said they would not have a rebuttal  
08:53:21 12 case, they wrote while preparing for closing argument, and  
08:53:21 13 reviewing transcript this evening, we realized that Naomi  
08:53:21 14 Biden provided inaccurate testimony about the date when the  
08:53:21 15 defendant traveled to New York. That's what they wrote,  
08:53:21 16 that's the need for rebuttal. I understand, we can address  
08:53:21 17 that.

08:53:21 18 What they have done after that late at night was  
08:53:21 19 to provide us a new set of texts, forty-two of them, to  
08:53:21 20 propose in between before he got to New York where he was,  
08:53:21 21 who he was talking with, and what he was doing, which  
08:53:21 22 includes references that could be to try to contact or have  
08:53:21 23 people that were contacting him for possible drug use, that  
08:53:21 24 was not put in their case-in-chief. If what they said, and  
08:53:21 25 this is rebuttal, this is a rebuttal case as to where he was



08:53:21 1 or whether Naomi was wrong, then that's what the rebuttal  
08:53:21 2 is. That doesn't need forty-two texts that includes all  
08:53:21 3 kinds ever other language.

08:53:21 4 We would be prepared to stipulate that either he  
08:53:21 5 you heard evidence from Naomi Biden that he arrived and was  
08:53:21 6 there the 15th, that's not correct it was a few days later,  
08:53:21 7 or we can stipulate as to whether he got there, on or we can  
08:53:21 8 stipulate as to what locations he was, but then to have  
08:53:21 9 forty-two texts of all this other material that they could  
08:53:21 10 have proposed is not rebuttal for the proposition, which  
08:53:21 11 would be proper rebuttal, and if it was even remotely  
08:53:21 12 relevant to that which was the date, then it would be  
08:53:21 13 prejudicial beyond any relevance.

08:53:21 14 THE COURT: So what date did she say?

08:53:21 15 MR. LOWELL: The 15th.

08:53:21 16 THE COURT: And what is the correct date?

08:53:21 17 MR. LOWELL: 17th. It's two days for that.

08:53:21 18 THE COURT: And he left New York on the 19th?

08:53:22 19 MR. LOWELL: 20th.

08:53:22 20 THE COURT: 20th. And so what are the dates of  
08:53:22 21 these texts?

08:53:22 22 MR. HINES: The first thing I'll say is all of  
08:53:22 23 these text messages do link to our proof that he was still  
08:53:22 24 in Delaware on October 15th, but nonetheless our rebuttal  
08:53:22 25 case is not limited, there is no rule of evidence that



08:53:22 1 limits a rebuttal case to exactly the words that the defense  
08:53:22 2 witness testified to.

08:53:22 3 What I'll say on how it relates to the 15th is  
08:53:22 4 that we have location information showing him at a 7-Eleven  
08:53:22 5 on October 14th, 15th and 16th, I believe those are the  
08:53:22 6 dates that's reflected in the summary chart.

08:53:22 7 And location information and a photograph is  
08:53:22 8 just that, it's location information, it does not identify  
08:53:22 9 whether the person themselves was actually necessarily at that  
08:53:22 10 location because the photograph shows a geolocation, it  
08:53:22 11 could have been someone else's photograph. So the other  
08:53:22 12 messages that we included are all messages, et cetera, that  
08:53:22 13 show the defendant did frequent a 7-Eleven, they are just  
08:53:22 14 messages from October 9th through that date when he left the  
08:53:22 15 area showing that he was communicating with other  
08:53:22 16 individuals to meet at a 7-Eleven.

08:53:22 17 So it shows that, in fact, in that photograph  
08:53:22 18 from the date before he goes up to New York of a 7-Eleven  
08:53:22 19 does reflect that the defendant does, you know, frequent  
08:53:22 20 that location. Relative, probative, including of the fact  
08:53:22 21 that defense elicited that he went up to New York on the  
08:53:22 22 15th, but it directly refutes that.

08:53:22 23 Moreover, I will also say Naomi Biden testified  
08:53:22 24 as to her observations of the defendant in August and then  
08:53:22 25 also in October of 2018 and sort of his -- her view, her

08:53:22 1 perception of his state of mind at that time. What these  
08:53:22 2 messages show was that, in fact, during that time period,  
08:53:22 3 the same period she testified about, he's meeting with other  
08:53:22 4 individuals at a 7-Eleven, including around the time of the  
08:53:22 5 drug purchase, and the defense has argued that that 7-Eleven  
08:53:22 6 text where he's meeting the dealer named Mookie is a lie but  
08:53:22 7 what we do see around that time period is, in fact, the  
08:53:22 8 defendant is meeting at a 7-Eleven with other individuals.  
08:53:22 9 So all of this directly rebuts both the arguments of counsel  
08:53:22 10 and the testimony of Ms. Biden.

08:53:22 11 THE COURT: Forty-two? You need forty-two  
08:53:22 12 texts?

08:53:22 13 MR. HINES: They're succinct texts. Obviously  
08:53:23 14 if there was an issue with any one of them we would be happy  
08:53:23 15 to address them with defense counsel. I have a -- would  
08:53:23 16 Your Honor like a physical copy?

08:53:23 17 THE COURT: Yes.

08:53:23 18 MR. HINES: So the first page is a series of  
08:53:23 19 messages with someone who identifies himself as Junior and a  
08:53:23 20 couple of places they talk, both him and defendant talk  
08:53:23 21 about meeting at a 7-Eleven.

08:53:23 22 On page 2, number 11, Junior asks, "Do you want  
08:53:23 23 the same?"

08:53:23 24 MR. LOWELL: Exactly.

08:53:23 25 MR. HINES: He then begins texting from another

08:53:23 1 phone, I'm at a 7-Eleven now, that's at Row 13. And then  
08:53:23 2 the defendant on October 11th says, "Meet me at 7-Eleven at  
08:53:23 3 3:00." So the messages --

08:53:23 4 MR. LOWELL: Which row was that?

08:53:23 5 MR. HINES: Row 23. So there is five messages  
08:53:23 6 including the Row 25 in which the defendant is communicating  
08:53:23 7 about meeting at a 7-Eleven.

08:53:23 8 MR. LOWELL: Judge, even that one -- first of  
08:53:23 9 all, again, this is an interesting way to try to get into a  
08:53:23 10 rebuttal case that which they could have done in their  
08:53:23 11 case-in-chief. And they are trying to take a small item  
08:53:23 12 that they said they need to rebut which was when he got to  
08:53:23 13 New York into now something way farther and way more  
08:53:23 14 prejudicial.

08:53:23 15 For example, this row is on October 11th. Naomi  
08:53:23 16 did not say he was on the 11th or the 12th or the 13th or  
08:53:23 17 the 14th or the 15th. Again, to create not the prejudice,  
08:53:23 18 the possibility we can create the stipulation that would say  
08:53:23 19 that he did not get to New York the 15th, it was later and  
08:53:23 20 the days that he was in Delaware, he would go to a 7-Eleven  
08:53:23 21 if that's what their point is. You can do that in two  
08:53:23 22 sentences. But this is extraordinary. This is prejudicial.  
08:53:23 23 This is what they could have done, if they had to do it,  
08:53:23 24 they didn't do it in their case-in-chief. I got it late  
08:53:23 25 night, because it needs to happen in the way that they're

08:53:23 1 saying what they are seeking --

08:53:23 2 THE COURT: Let me take a look at these and take  
08:53:23 3 a break.

08:53:23 4 (End of side-bar.)

08:53:23 5 THE COURT: All right. We're going to take just  
08:53:23 6 a couple minute break.

08:53:23 7 COURT CLERK: All rise.

09:15:35 8 THE COURT: All right. Everyone can be seated.

09:59:51 9 (Side-bar discussion:)

09:59:51 10 MR. LOWELL: So what I just noticed since we  
09:59:51 11 didn't get this and I didn't see it until morning, this  
09:59:51 12 starts off with something, now as I look at the testimony it  
09:59:51 13 is when he drove it up, do you recall about what day.

09:59:51 14 THE COURT: So I get it, but what I went -- I  
09:59:51 15 mean, I just went back and I read her testimony and the  
09:59:51 16 problem is she said that he was -- he was in good shape and  
09:59:51 17 he -- you asked her, she had said he was clear as I had ever  
09:59:51 18 seen him or I had seen him in years and then you said was in  
09:59:51 19 October on a par with how clear he was back when you saw him  
09:59:51 20 -- and this was you said at the end of October. You were  
09:59:51 21 asking her was he sober.

09:59:51 22 MR. LOWELL: Yes, and sober can mean alcohol and  
09:59:51 23 sober can mean other things. But judge, again they didn't  
09:59:51 24 cross her on any of those. But the point is let's say he  
09:59:51 25 was using -- let's assume for the purposes of this that they

09:59:52 1 wanted to put evidence in and there is none directly, all  
09:59:52 2 these texts aren't responded to this person he was texts  
09:59:52 3 that he was using drugs on the 11th, the 12th, the 13th, the  
09:59:52 4 14th the 15th, let's assume that's what they want to say.  
09:59:52 5 That has no bearing when she saw him on the 19th whether he  
09:59:52 6 looked the same as he did.

09:59:52 7 That is extraordinary taking and shoehorning a  
09:59:52 8 proposition that they had the ability -- I looked it up,  
09:59:52 9 there is lots of cases talking about rebuttal evidence has  
09:59:52 10 to rebut what they say they are seeking to rebut which is  
09:59:52 11 what they told us is when, now they're saying they didn't  
09:59:52 12 say that before, it is about how she could say on the 20th  
09:59:52 13 or the 19th when they saw each other he looked as good as he  
09:59:52 14 did, to talk about what he did on the 9th, the 10th, the  
09:59:52 15 11th or 12th, they could have confronted her, they did which  
09:59:52 16 was something that wasn't true, sending a code to somebody  
09:59:52 17 that night which they know was probably a month later.  
09:59:52 18 That's the point.

09:59:52 19 Some of these texts I find out are to Finnegan  
09:59:52 20 in this period of time, his daughter. To get now to a  
09:59:52 21 number of texts -- yeah, Row 12, I understand that, but he  
09:59:52 22 doesn't even respond. It's just an extraordinary attempt to  
09:59:52 23 shoehorn in a rebuttal case which the case law says you  
09:59:52 24 rebut the thing you are rebutting which is where he was,  
09:59:52 25 they have all this evidence of where he was, there is not

09:59:52 1 anything on the 15th where they want to rebut that she was  
09:59:52 2 wrong, and then on the 16th, for example, is one where there  
09:59:52 3 is a text to Finnegan.

09:59:52 4 Judge, I'm sorry, I don't know how to say this  
09:59:52 5 better because I'm just flustered by this, but if you think  
09:59:52 6 that this -- the door opens because I asked her about what  
09:59:52 7 day on the issue of dates and locations, then I don't have  
09:59:52 8 any objection to them pointing out where she -- he actually  
09:59:52 9 was.

09:59:52 10 THE COURT: Right. But she was testifying that  
09:59:52 11 -- she was testifying that he was in the same shape as he  
09:59:52 12 was when he was sitting with his sober coach in August.

09:59:52 13 MR. LOWELL: Indeed.

09:59:52 14 THE COURT: And this is circumstantial evidence  
09:59:52 15 that he wasn't in that same shape.

09:59:52 16 MR. LOWELL: But there you just made the leap  
09:59:52 17 which is terribly, terribly unfair. She said that he  
09:59:52 18 looked, she didn't say she gave him a drug test.

09:59:53 19 THE COURT: I know, but Mr. Lowell the reason  
09:59:53 20 you put her up there was so that she could say he looked  
09:59:53 21 like he wasn't on drugs, that why you put her up there,  
09:59:53 22 that's why you were asking her those questions.

09:59:53 23 MR. LOWELL: No, I was asking her to show where  
09:59:53 24 the truck was which we did and whether the lock box was  
09:59:53 25 intact and she did mention other things.



09:59:53 1 Judge, to be really fair about this, think about  
09:59:53 2 what you just said to me, you're saying on the 19th and 20th  
09:59:53 3 when her perception is that he looked the same, evidence  
09:59:53 4 about what he was doing with whom and where on the 11th or  
09:59:53 5 12th or any other day is probative of what she perceived.  
09:59:53 6 They asked every witness could he be using drugs and hide  
09:59:53 7 it, could he be using drugs and be functional, it is so  
09:59:53 8 terrible prejudicial beyond the rebuttal law what is allowed  
09:59:53 9 in rebuttal to allow them what they could have done in their  
09:59:53 10 case-in-chief, which is exactly what this is about. I don't  
09:59:53 11 know why they didn't try. To shoehorn her perception on the  
09:59:53 12 20th based on their own evidence which says over and over  
09:59:53 13 again that he could be using drugs and you wouldn't even  
09:59:53 14 know it. They made that point. They can argue that point.

09:59:53 15 But if Naomi Biden thought on the 20th or the  
09:59:53 16 19th he looked the same then we've told you over and over  
09:59:53 17 again that he had the ability to do that, but it was not  
09:59:53 18 rebuttal to her perception of what he was really doing or  
09:59:53 19 who a week before, if you look at these, that's what they're  
09:59:53 20 trying to do and if you're suggesting that they can do that,  
09:59:53 21 that they can open the door based on one line, two lines,  
09:59:53 22 one is about when, and that he looked the same that is so  
09:59:53 23 far beyond what rebuttal evidence could be, you see it,  
09:59:53 24 Judge, you see what's going on here, they're trying to wedge  
09:59:53 25 in because of the about language or her perception and her



09:59:53 1 perception on a day doesn't link to what he was doing a week  
09:59:53 2 before.

09:59:53 3 I have said before if that's what they're  
09:59:54 4 honestly doing, we can either stipulate to where he was,  
09:59:54 5 including if they want to say that on those days he's in  
09:59:54 6 Delaware, location data says he's at a 7-Eleven and that  
09:59:54 7 does it, but everything else, why, if you allow this in in  
09:59:54 8 their rebuttal case, it is beyond what I have just been able  
09:59:54 9 to look for in the rebuttal evidence law about what  
09:59:54 10 specifically they're going to rebut.

09:59:54 11 And your view that her ability to say that he  
09:59:54 12 looked the same to me, and you asked me, I did that, in fact  
09:59:54 13 I did that, but it doesn't undercut her saying that given  
09:59:54 14 what they have said and admitted, that many times when he  
09:59:54 15 was using you wouldn't know he was using drugs, they made  
09:59:54 16 that point. What he did on the 11th, now I'm repetitive but  
09:59:54 17 this is really changing events.

09:59:54 18 THE COURT: Are you going to say --

09:59:54 19 MR. LOWELL: No, I am not going to say in  
09:59:54 20 closing arguments if that's what you're asking that she said  
09:59:54 21 he looked the same.

09:59:54 22 MR. HINES: We have to be able to rebut that.  
09:59:54 23 What we're proposing is about five, maybe ten minutes of  
09:59:54 24 direct about messages over a six-day period that immediately  
09:59:54 25 precedes what their defense witness talked about and her

09:59:54 1 observations of the defendant on that date in question and  
09:59:54 2 the inaccurate testimony that she provided on the location.  
09:59:54 3 All of that rebutting is the defendant, as if Mr. Lowell's  
09:59:54 4 argument we're presenting messages from the entire year,  
09:59:54 5 it's a very limited window of a very limited purpose which  
09:59:54 6 rebuts what she was put on the stand for of which we had no  
09:59:54 7 knowledge of what she was going to testify to, no Jencks, no  
09:59:54 8 reciprocal discovery, so it's perfectly appropriate for us  
09:59:54 9 to use the weekend to go back and see what he was saying and  
09:59:54 10 rebut that testimony.

09:59:54 11 MR. LOWELL: I am going to be repetitive, this  
09:59:54 12 is a case changing event and it shouldn't be a case changing  
09:59:54 13 event where they shoehorn in this. What is relevant to  
09:59:54 14 rebut her perception of him on the 19th can be what? If he  
09:59:54 15 didn't use drugs two weeks before does that rebut her  
09:59:54 16 perception? Six days before we know when he is on crack.  
09:59:54 17 He has to do it every twenty minutes according to the  
09:59:54 18 testimony. There is a disconnect, there is an extraordinary  
09:59:54 19 disconnect from her saying I saw him, maybe she wants to  
09:59:54 20 look at him in blinders, maybe she doesn't say what he does,  
09:59:55 21 but that's not --

09:59:55 22 THE COURT: Yes. Look.

09:59:55 23 MR. LOWELL: If you're going to allow all those  
09:59:55 24 in, Judge, you're going to allow all those in, but I am  
09:59:55 25 saying as clearly as I can --

09:59:55 1 THE COURT: I understand. I understand. I  
09:59:55 2 mean --

09:59:55 3 MR. LOWELL: Look at the prejudice in each one  
09:59:55 4 of those messages.

09:59:55 5 THE COURT: I get it. I get it. But it is  
09:59:55 6 rebuttal and the standard is is it unfairly prejudicial.  
09:59:55 7 And I don't --

09:59:55 8 MR. LOWELL: How --

09:59:55 9 THE COURT: How is it not -- how is it unfairly  
09:59:55 10 prejudicial, I guess because you're saying he was sober and  
09:59:55 11 the stuff about Mookie was a lie, and this is contrary to  
09:59:55 12 that?

09:59:55 13 MR. LOWELL: She didn't see him on the 10th, the  
09:59:55 14 11th, the 12th, the 13th, the 14th, and now we know the  
09:59:55 15 15th, she doesn't see him until the 19th. By the way as I  
09:59:55 16 said these include people texting him for which he does not  
09:59:55 17 text back. And in this it's including him meeting up with  
09:59:55 18 women, not drug dealers. And that is again something that  
09:59:55 19 if this comes in, I have to start exploring and it just  
09:59:55 20 changes the focus of the case which we have scrupulously not  
09:59:55 21 done. I see your inclination, but I think you can do this  
09:59:55 22 with less.

09:59:55 23 THE COURT: So what about the point that  
09:59:55 24 Mr. Lowell just made which is that some of these he doesn't  
09:59:55 25 even respond to? So these ones on the 9th, they don't seem

09:59:55 1 to be responded to.

09:59:55 2 MR. HINES: He responds the following day on the  
09:59:55 3 tent, meet me at the 7-Eleven now.

09:59:55 4 THE COURT: There is the 10th from the person.

09:59:55 5 MR. HINES: Correct.

09:59:55 6 THE COURT: And then he says can you meet me  
09:59:55 7 now.

09:59:55 8 MR. HINES: Right. So the first row is the  
09:59:55 9 person asking to meet at the 7-Eleven. The fifth row  
09:59:55 10 ultimately the following day Mr. Biden agrees to meet him at  
09:59:55 11 the 7-Eleven. So we could cut out numbers 2, 3, and 4 in  
09:59:55 12 the middle.

09:59:55 13 MR. LOWELL: Number 8, for example, is this guy  
09:59:55 14 saying I have to get off at 3:30, we're going all the way  
09:59:55 15 back to the tent for what she perceived to the 19th, that's  
09:59:55 16 where I'm saying.

09:59:56 17 THE COURT: The problem is, yes, it's what she  
09:59:56 18 perceived to 19th, but the questions were elicited to make  
09:59:56 19 it seem like he was doing great from -- I mean, you  
09:59:56 20 basically brought her from --

09:59:56 21 MR. LOWELL: Judge, that's unfair to me, I said  
09:59:56 22 she saw him one time in Los Angeles, she does not see him in  
09:59:56 23 between, I never suggested as your suggestion to me is that  
09:59:56 24 she saw him in between. There is a point of time in August  
09:59:56 25 and a point of time in on October.

09:59:56 1 THE COURT: Right. And the reason that it was  
09:59:56 2 done was to suggest that this had been a longer period of  
09:59:56 3 sobriety.

09:59:56 4 MR. LOWELL: You're giving me too much credit.

09:59:56 5 MR. WISE: The question was specifically linking  
09:59:56 6 the two.

09:59:56 7 THE COURT: That's why I took the break. I  
09:59:56 8 wanted to read the transcript.

09:59:56 9 MR. WISE: He linked the two, it wasn't just one  
09:59:56 10 isolated incident.

09:59:56 11 MR. LOWELL: Was he of the same condition, use  
09:59:56 12 whatever the phrase was, I'm prepared to live by the phrase  
09:59:56 13 but that doesn't do what this says. Here as an example, all  
09:59:56 14 the texts that he doesn't respond to, the next day, or the  
09:59:56 15 next night he says give me ten, please, that's to his  
09:59:56 16 daughter, Finnegan. And he's in Philadelphia. And that's  
09:59:56 17 what I have to start unwinding now because each of these has  
09:59:56 18 a different possibility.

09:59:56 19 MR. HINES: So immediately after he gets this  
09:59:56 20 message he responds give me ten, it is to Finnegan, but it's  
09:59:56 21 in this response to a message above it to another person.

09:59:56 22 MR. KOLANSKY: Look at the entire abstract --

09:59:56 23 THE COURT: You don't talk to each other when  
09:59:56 24 I'm here, you talk to me. So we're taking out 12.

09:59:56 25 MR. LOWELL: Judge, I'm asking that this is far

09:59:56 1 in excess even for the proposition that you want, and I  
09:59:56 2 would -- you seem to be inclined to let them do this, and I  
09:59:56 3 think it's wrong.

09:59:56 4 THE COURT: I understand. And I -- I understand  
09:59:56 5 what the problem is, and I wish we weren't in this  
09:59:56 6 situation, but the fact is that I do think it's fair  
09:59:56 7 rebuttal, it may be prejudicial, but I don't think it's  
09:59:56 8 unfairly prejudicial.

09:59:56 9 MR. LOWELL: How can it not be unfairly  
09:59:56 10 prejudicial to allow texts which most of all of them are not  
09:59:56 11 responded to and are misleadingly so when he says ten  
09:59:56 12 minutes for more than a week from the time the witness  
09:59:56 13 testified that she perceived him as evidence that the way  
09:59:57 14 that she perceived him on August the 19th or the 20th is  
09:59:57 15 anyway rebuttal by what he was doing five days before.

09:59:57 16 The question in evidence is how she perceived  
09:59:57 17 him, not whether he was or was not using. And it is unfair  
09:59:57 18 in another way as you tried to suggest that my question said  
09:59:57 19 that she was well aware of how he was from the moment he  
09:59:57 20 left Los Angeles all the way to the time she saw him in New  
09:59:57 21 York, that is what this does.

09:59:57 22 MR. HINES: May I offer a proposal? So there  
09:59:57 23 are messages in between the 7-Eleven stamps where the dealer  
09:59:57 24 is sending a series of messages in a row and it doesn't  
09:59:57 25 relate to 7-Eleven, some of them we can take out to truncate



09:59:57 1 them, we included them so Mr. Lowell could have a full  
09:59:57 2 snapshot, we're happy to remove rows 2 through 4.

09:59:57 3 MR. LOWELL: Need less to say --

09:59:57 4 THE COURT: You're going to have to --

09:59:57 5 MR. LOWELL: Go ahead.

09:59:57 6 MR. HINES: On the following page we've agreed  
09:59:57 7 to remove Row 12, we can also remove rows 14, 1516 -- 16  
09:59:57 8 through 20, we can delete those. So all those middle  
09:59:57 9 messages with the drug dealer can be taken out. So it's  
09:59:57 10 limited to the set up and the meets on the 7-Eleven.

09:59:57 11 MR. LOWELL: I'm sorry, which -- it just says --

09:59:57 12 THE COURT: 16 through 21.

09:59:57 13 MR. LOWELL: And then, Your Honor, 21, this is  
09:59:57 14 if guy not saying anything about a 7-Eleven, just --

09:59:57 15 MR. HINES: He's texting from a new phone number  
09:59:57 16 now.

09:59:57 17 MR. LOWELL: He is, he being Q.

09:59:57 18 MR. HINES: Correct. He's texting from a new  
09:59:57 19 phone saying I lost my cell and Mr. Biden responds to that  
09:59:57 20 later in the evening at 6:41 saying meet me at the 7-Eleven.

09:59:57 21 MR. LOWELL: Not -- I'll come back to this, then  
09:59:57 22 if you're looking about saying meet me at the 7-Eleven at  
09:59:57 23 3:00, the one before it is "come on dude, you can do it, the  
09:59:57 24 way you invited to my bro to join a private party."

09:59:57 25 I mean, that's the one, then you don't need 21,



09:59:57 1 you need 22 for that, his response.

09:59:57 2 MR. HINES: I mean, 21 shows it's the same  
09:59:57 3 person as the previous messages.

09:59:57 4 MR. LOWELL: Right, but so does the next one, so  
09:59:57 5 does 22.

09:59:57 6 MR. HINES: He doesn't say my name is Q in 22.

09:59:57 7 MR. LOWELL: Yeah, but the phone number is  
09:59:57 8 exactly the same.

09:59:57 9 MR. HINES: But it's a different phone number  
09:59:57 10 from the messages in the beginning, he changes his phone  
09:59:58 11 number so he reaches out to Mr. Biden with his new phone  
09:59:58 12 number and says it's Q and Mr. Biden says meet me at the  
09:59:58 13 7-Eleven at 3:00.

09:59:58 14 MR. LOWELL: 21 should be in and 22 is out  
09:59:58 15 because that's, you're saying you read it for the purposes,  
09:59:58 16 it's a guy named Q with a new phone number.

09:59:58 17 MR. HINES: We can take 22 out.

09:59:58 18 MR. LOWELL: And then 23, meet me at 7-Eleven,  
09:59:58 19 and then the guys says, that's not necessary because you  
09:59:58 20 have made your point and then we're back to the ones with  
09:59:58 21 Hallie and all the rest are not necessary.

09:59:58 22 MR. HINES: The other ones are location  
09:59:58 23 information showing him in Delaware and at a 7-Eleven.

09:59:58 24 MR. LOWELL: I haven't checked that location  
09:59:58 25 data, Judge, and we have made that 7-Eleven point by what he

09:59:58 1 has just said it does that when he says in his response, and  
09:59:58 2 I haven't been able to check this, I don't know that it's  
09:59:58 3 necessary. I stipulated that he was between the -- whatever  
09:59:58 4 the date and the date he left in Delaware or wherever he was  
09:59:58 5 --

09:59:58 6 THE COURT: So there were questions asked,  
09:59:58 7 somebody, do you know, it might have been the FBI woman, do  
09:59:58 8 you know if he was actually at the 7-Eleven. Maybe it was  
09:59:58 9 Ms. Biden.

09:59:58 10 MR. WISE: It was Special Agent Janssen and  
09:59:58 11 Romig, both of them.

09:59:58 12 THE COURT: Do you know if he was there? Are  
09:59:58 13 you going to contest that he was there?

09:59:58 14 MR. LOWELL: On the 13th, but not on the 16th I  
09:59:58 15 won't contest it if this is accurate, but that's not the  
09:59:58 16 same as on the 13th. I mean, people go to 7-Elevens other  
09:59:58 17 than to meet up with people. I think they sell slurpies, so  
09:59:58 18 I don't contest that on the 16th.

09:59:58 19 MR. WISE: I mean it's highly probative that  
09:59:58 20 it's a 7-Eleven on the 16th, it's not just somewhere, it's  
09:59:58 21 not that he is in Delaware.

09:59:58 22 MR. LOWELL: But it's three days later, to say  
09:59:58 23 that somebody frequents a 7-Eleven when they're on in  
09:59:58 24 Delaware on three days later when he says he was at the  
09:59:58 25 7-Eleven, doesn't mean he was at the 7-Eleven, it would be

09:59:58 1 if it was a unique place, I don't know what could be a  
09:59:58 2 unique place in downtown Wilmington that would make sense,  
09:59:58 3 but to make the leap of what that means on the 16th or 17th  
09:59:58 4 means that he was there on the 13th, that's just a leap.

09:59:58 5 MR. WISE: He's setting up meetings at the  
09:59:58 6 7-Eleven, he's not going into to buy Chapstick.

09:59:58 7 MR. HINES: Just to explain what we're looking  
09:59:58 8 at, rows 26 to 28 Mr. Biden is placing himself in Delaware  
09:59:58 9 with his communications with Hallie Biden, the address in  
09:59:58 10 Greenville is her address, I can't get in, it's not just  
09:59:58 11 looking at the following line which advertise 7-Eleven.

09:59:58 12 MR. LOWELL: Exactly.

09:59:59 13 THE COURT: So she actually saw him on the 16th.

09:59:59 14 MR. HINES: So he's saying I'm at her address.

09:59:59 15 MR. LOWELL: I'm here, I can't get in.

09:59:59 16 MR. HINES: Right.

09:59:59 17 MR. LOWELL: So it doesn't mean that he saw, and  
09:59:59 18 more importantly, after she says that, he can't get in is  
09:59:59 19 when he goes to the 7-Eleven at 4 o'clock in the morning,  
09:59:59 20 probably to get coffee.

09:59:59 21 MR. HINES: So we can delete 26 to 28. We put  
09:59:59 22 them in for clarity, if you're not going to cross on that  
09:59:59 23 topic.

09:59:59 24 MR. LOWELL: 25 is already in and therefore it's  
09:59:59 25 not rebuttal, that would be cumulative.

09:59:59 1 MR. HINES: But 25 is reference to 7-Eleven, so  
09:59:59 2 that's the one message from the summary chart that we've  
09:59:59 3 included here from before for context so the jury  
09:59:59 4 understands.

09:59:59 5 MR. WISE: It's already in evidence.

09:59:59 6 MR. HINES: So we'll keep 29, we'll keep 30,  
09:59:59 7 that also keeps him at the 7-Eleven.

09:59:59 8 MR. LOWELL: Hold on a second.

09:59:59 9 MR. HINES: We can delete 31.

09:59:59 10 MR. LOWELL: It's five minutes apart, we don't  
09:59:59 11 need to point out multiple times in the same cup of coffee  
09:59:59 12 that he's at the 7-Eleven at 5 or 75 or 7 '07 later.

09:59:59 13 MR. HINES: That's exactly why, you're calling  
09:59:59 14 it a cup of coffee, once I remove that second message you'll  
09:59:59 15 call it a drive by so having that is important to show a  
09:59:59 16 meet.

09:59:59 17 MR. LOWELL: Showing a meet.

09:59:59 18 MR. HINES: Showing he's at the 7-Eleven.

09:59:59 19 MR. LOWELL: We'll stipulate that he was at the  
09:59:59 20 7-Eleven after he can't get into Hallie's house.

09:59:59 21 MR. HINES: He's still there on Row 30, we'll  
09:59:59 22 delete Row 31.

09:59:59 23 MR. LOWELL: Where he's asking four minutes  
09:59:59 24 later, are you up, as if he's waiting for her to be up, not  
09:59:59 25 that he's sitting there waiting, he's at the 7-Eleven.

09:59:59 1 MR. HINES: We'll take it out. We'll take out  
09:59:59 2 Row 32 as well.

09:59:59 3 MR. LOWELL: I don't see why 30 and 31 is  
09:59:59 4 necessary if the point he was there and you see it, I  
09:59:59 5 mean --

09:59:59 6 MR. HINES: 29 and 30 establish he was at the  
09:59:59 7 7-Eleven.

09:59:59 8 MR. LOWELL: 29 establishes he was at the  
09:59:59 9 7-Eleven.

09:59:59 10 MR. HINES: And 30 establishes he's at the  
09:59:59 11 7-Eleven seven minutes later, eight minutes later.

09:59:59 12 MR. LOWELL: Yeah, with what probative value,  
09:59:59 13 that means for sure it means what you want it to mean at  
09:59:59 14 five in the morning.

09:59:59 15 THE COURT: Look. You're going to say he was  
09:59:59 16 getting a cup of coffee and maybe he was getting a cup of  
09:59:59 17 coffee, but this is circumstantial evidence that he was --

10:00:00 18 MR. LOWELL: Why do we need both is what I'm  
10:00:00 19 saying, what difference does it make?

10:00:00 20 THE COURT: Because it's the time.

10:00:00 21 MR. LOWELL: 5:12, four minutes later from  
10:00:00 22 Row 29. How is that probative that he was there for four  
10:00:00 23 minutes.

10:00:00 24 MR. HINES: I think we count differently, seven  
10:00:00 25 minutes is the difference in time.

10:00:00 1 MR. LOWELL: Wait, 5 or 5, 12, you're right my  
10:00:00 2 math is wrong.

10:00:00 3 THE COURT: 29 and 30, okay.

10:00:00 4 What's next?

10:00:00 5 MR. HINES: So then we agreed to take out 31,  
10:00:00 6 32.

10:00:00 7 MR. LOWELL: No, I want 32 in.

10:00:00 8 MR. HINES: All right. So then we got to go  
10:00:00 9 back to the ones that we took out on the previous page.

10:00:00 10 MR. LOWELL: You took out one on this page, the  
10:00:00 11 Judge is saying 29 and 30.

10:00:00 12 MR. HINES: Look, you just us to take out rows  
10:00:00 13 26 through 28 which were messages with Hallie.

10:00:00 14 MR. LOWELL: Let's do that, then?

10:00:00 15 MR. HINES: So 26 and 28 are the same thing as  
10:00:00 16 32, they're messages with Hallie about trying --

10:00:00 17 MR. LOWELL: 26, 27, 28 is out, 29 you're saying  
10:00:00 18 you would keep in. 30 --

10:00:00 19 THE COURT: Hold on. 26 through 28 are  
10:00:00 20 communications with Hallie Biden.

10:00:00 21 MR. HINES: Correct.

10:00:00 22 THE COURT: And you're saying if he wants the  
10:00:00 23 later communication with Hallie Biden in, you want the  
10:00:00 24 earlier communications with Hallie Biden.

10:00:00 25 MR. HINES: Correct.



10:00:00 1 MR. LOWELL: Wait. Starting with 20 --

10:00:00 2 THE COURT: Six.

10:00:00 3 MR. LOWELL: Yeah, you can put 26 back in. You  
10:00:00 4 can put 27 back in. Then he goes to 28 out, 29 gets you  
10:00:00 5 what you just said you needed, that's where he is at that  
10:00:00 6 hour. And then I still object to 30 because we've made the  
10:00:00 7 point. And then I guess the end of the story is 32, that  
10:00:00 8 "are you up" because you have now included the others.

10:00:00 9 MR. HINES: So the end of the story will be 33  
10:00:00 10 because he goes back to the place in the middle of the  
10:00:00 11 night.

10:00:00 12 MR. LOWELL: Wait. Goes back to -- he's there.

10:00:00 13 MR. HINES: That's her location in Greenville.

10:00:00 14 MR. LOWELL: He doesn't leave, there is no  
10:00:00 15 indication that Hallie was up and he went there and went  
10:00:00 16 back.

10:00:00 17 MR. HINES: Row 33, Mr. Lowell is Greenville  
10:00:00 18 Delaware, that is her specific geolocation information for  
10:00:00 19 her residence, so he does go back in the middle of the night  
10:00:01 20 and you want us to keep those messages in with Hallie, we're  
10:00:01 21 happy to do it, do you want them in or out?

10:00:01 22 MR. LOWELL: As I said to not get beyond where  
10:00:01 23 we are, I take out 32, 33, 34, 35.

10:00:01 24 THE COURT: You now want 32 out?

10:00:01 25 MR. LOWELL: Well, to get 32 in which ends where

10:00:01 1 he is, we need to get in that he goes back somewhere else,  
10:00:01 2 it's Greenville on 33, it's Greenville on 34, I thought I  
10:00:01 3 just heard him say that that means he's at Hallie's, that  
10:00:01 4 Greenville is her, Lancaster is 7-Eleven so I don't mind  
10:00:01 5 keeping 33 and 34 in if it indicates where he is on those  
10:00:01 6 two days.

10:00:01 7 THE COURT: So 32 to 34 okay.

10:00:01 8 MR. LOWELL: Yes.

10:00:01 9 MR. HINES: We can remove 35.

10:00:01 10 MR. LOWELL: 35 is out. And then --

10:00:01 11 MR. HINES: We can remove 36, 37.

10:00:01 12 MR. LOWELL: 38 is in New York where there is --  
10:00:01 13 and, Your Honor, that is not about as I pointed out before  
10:00:01 14 any drug dealing, that's a woman.

10:00:01 15 MR. HINES: So 38 shows he's in New York on the  
10:00:01 16 17th which rebuts Naomi which she says in answer to your  
10:00:01 17 question that he was there on October 15th.

10:00:01 18 MR. LOWELL: Yes, but the problem is to get that  
10:00:01 19 point you're actually, can you hang out tonight the  
10:00:01 20 inference is with a drug dealer and that's what's improper  
10:00:01 21 about it. That's not what that is. Use the location data  
10:00:01 22 in 39 if that's what you want to point out.

10:00:01 23 MR. HINES: I mean, it's an admission that he's  
10:00:01 24 in New York on the 17th and it rebuts a point that you  
10:00:01 25 elicited from Naomi.

10:00:01 1 THE COURT: He's saying you can rebut it with  
10:00:01 2 line 39, it does sort of sound like he's setting up a drug  
10:00:01 3 deal, actually I have no idea if he was meeting up with a  
10:00:01 4 woman or a drug dealer.

10:00:01 5 MR. LOWELL: But I have to suggest that with  
10:00:01 6 crossing the agent and that opens a door that I don't want  
10:00:01 7 to open it's unnecessary.

10:00:01 8 MR. HINES: We'll delete 38 and we can take out  
10:00:01 9 --

10:00:01 10 MR. LOWELL: 40 is the same. 41 would be the  
10:00:01 11 same. I mean, there is no context that on the 18th 19th and  
10:00:01 12 20th he's in New York had, these are the dates, they're  
10:00:01 13 trying to say let's shoehorn all this because it's she said  
10:00:01 14 it's about the 15th and consequently why are we contesting  
10:00:01 15 it was the 18th, 19th and 20th?

10:00:01 16 MR. HINES: It was elicited by you, so we have a  
10:00:01 17 right to rebut this.

10:00:01 18 MR. LOWELL: It's inconsistent with what she  
10:00:02 19 said.

10:00:02 20 MR. HINES: 39 is the location but it is the  
10:00:02 21 same issue as before, a location on a photo shows that the  
10:00:02 22 photo was taken at a certain location, its doesn't show that  
10:00:02 23 the person necessarily who was using the device was in that  
10:00:02 24 place so these messages confirm, both 30, 29 and 41 show he  
10:00:02 25 was at the Four Seasons so it shows his location in New York

10:00:02 1 was accurate on Row 39.

10:00:02 2 MR. LOWELL: They can say for 30 it's okay to  
10:00:02 3 use the location data which doesn't necessarily mean he was  
10:00:02 4 there and now they're saying.

10:00:02 5 THE COURT: No, they're saying it by itself  
10:00:02 6 doesn't show he was there, that's why they want the stuff  
10:00:02 7 surrounding it. With respect the one where we said okay,  
10:00:02 8 for the location data --

10:00:02 9 MR. LOWELL: For example --

10:00:02 10 THE COURT: 29 and 30.

10:00:02 11 MR. LOWELL: That doesn't have the text that  
10:00:02 12 confirms that's where it is, it just has the location data,  
10:00:02 13 no differently than the location data that they're pointing  
10:00:02 14 out where they can get in can you hang out tonight, I'm in  
10:00:02 15 New York, that is just not necessary for the proposition and  
10:00:02 16 it opens the door and that is unfair prejudice because 39  
10:00:02 17 says where he is, it's okay to say where he is.

10:00:02 18 THE COURT: Here is my question though, you know  
10:00:02 19 he's in New York on the 18th right? Why are we showing he's  
10:00:02 20 in New York on the 18th.

10:00:02 21 MR. WISE: One of the things I brought out on  
10:00:02 22 cross is this kind of frenetic erratic attempt to get  
10:00:02 23 together after the testimony that he was clear eyed and that  
10:00:02 24 is contradicted by that. And this rebuts the testimony that  
10:00:02 25 they had this meeting and he was clear eyed and this shows

10:00:02 1 that he's there and he's not meeting with her and instead  
10:00:02 2 he's having people come to his hotel room in the middle of  
10:00:02 3 the night. And I asked her about that and she said she  
10:00:02 4 didn't know anything about that. And this goes to that.

10:00:02 5 MR. LOWELL: Two different points there, Judge.  
10:00:02 6 There is no contest about what's already in, this is now  
10:00:02 7 beyond rebuttal. It's beyond rebuttal. We know he's in New  
10:00:02 8 York. They've already established what's going on in the  
10:00:02 9 middle of the night. And now they want to introduce  
10:00:02 10 something which says can you hang out for the proposition  
10:00:02 11 that he's in New York. If that's not unfair prejudice for  
10:00:02 12 the point they're making, then I don't know what is.

10:00:02 13 They don't do that because -- there is no  
10:00:03 14 contest that he's there. And the fact that Hallie -- sorry,  
10:00:03 15 that Naomi -- I take it back. The idea that Naomi and he  
10:00:03 16 cannot get together is something that they've pointed out.  
10:00:03 17 This does nothing to allucidate or rebut that point, nothing  
10:00:03 18 at all, and he's in New York, there is no rebuttal, because  
10:00:03 19 we know he's there and she says he's there, and the text and  
10:00:03 20 evidence already point out that he's there and he's having  
10:00:03 21 this issue with her.

10:00:03 22 By the way I want to state something on the  
10:00:03 23 record something that I only alluded to before as long as  
10:00:03 24 we're doing this, they asked Naomi Biden in that exchange in  
10:00:03 25 the middle of the night, did you know he was, I forgot the

10:00:03 1 exact phrase, but texting, and then ultimately, we didn't  
10:00:03 2 have that material, we have gone back and found it over the  
10:00:03 3 weekend. Judge, it was a month later in November and they  
10:00:03 4 made her and the jury believe that that's what was happening  
10:00:03 5 in that period of time. And they're yelling, and that's  
10:00:03 6 what this is about.

10:00:03 7 THE COURT: I am going to instruct the jury,  
10:00:03 8 once again, I added in the evidence what is and is not  
10:00:03 9 evidence, I'm going to tell the jury that any questions are  
10:00:03 10 not evidence.

10:00:03 11 MR. LOWELL: I just wanted the record to show  
10:00:03 12 that.

10:00:03 13 MR. WISE: And I'll say that there are messages  
10:00:03 14 both in October with Frankie, and in December.

10:00:03 15 MR. LOWELL: It's not what you said to Naomi  
10:00:03 16 Biden and it's not what you said to the jury. You said --

10:00:03 17 MR. WISE: I get yelled at now?

10:00:03 18 MR. LOWELL: You said in the middle of the night  
10:00:03 19 did you --

10:00:03 20 THE COURT: Again --

10:00:03 21 MR. LOWELL: That's not what they said, and the  
10:00:03 22 idea.

10:00:03 23 THE COURT:

10:00:03 24 MR. HINES: Now you get yelled at.

10:00:03 25 MR. LOWELL: You didn't say it, they said it.



10:00:03 1 MR. WISE: Your Honor, just on the rebuttal  
10:00:03 2 points, Mr. Lowell then elicited on redirect on the reason  
10:00:03 3 you weren't getting together was because you were too busy  
10:00:03 4 with court or whatever, this goes to show that's not the  
10:00:03 5 case.

10:00:03 6 MR. LOWELL: Well, it doesn't say -- actually  
10:00:03 7 you're wrong, it says can you hang out, there is no response  
10:00:03 8 that the person came.

10:00:03 9 THE COURT: All right. I think it's rebuttal.  
10:00:03 10 What about these last two.

10:00:03 11 MR. HINES: We can delete these last 2, 42 and  
10:00:03 12 43.

10:00:03 13 MR. LOWELL: Wait, can you leave out in New  
10:00:03 14 York, I thought that was out.

10:00:03 15 THE COURT: No, it was again because of her  
10:00:04 16 schedule, not his, so I'm going to let that in.

10:00:04 17 All right. What 62 what about 39? 39 is  
10:00:04 18 unnecessary, then.

10:00:04 19 MR. HINES: We can take out -- no, 39 is  
10:00:04 20 necessary.

10:00:04 21 THE COURT: We have 39, 40, 41, can we take out  
10:00:04 22 42 and 43?

10:00:04 23 MR. LOWELL: 41, 42 and 43.

10:00:04 24 MR. HINES: Take out 42 and 43.

10:00:04 25 MR. LOWELL: 40, 41 -- we don't need room 810.

10:00:04 1 Judge, that is a woman. And I don't get it, we're putting  
10:00:04 2 in can you hang out already, that's kind of enough.

10:00:04 3 THE COURT: I thought we took "can you hang  
10:00:04 4 out", out.

10:00:04 5 MR. LOWELL: Yes, it's out.

10:00:04 6 MR. HINES: I think that's in because it shows  
10:00:04 7 he's in New York.

10:00:04 8 MR. LOWELL: No, the location data in number 39,  
10:00:04 9 which is in the afternoon of 12:36 is beyond the point of  
10:00:04 10 what's happening on the 17th in the middle of the night,  
10:00:04 11 there is no contest by the 18th at 12:36, if you want that,  
10:00:04 12 fine, but hang out tonight. Judge, what would I have to do  
10:00:04 13 to try to clear up that that's not a drug deal? I would  
10:00:04 14 have to ask her something she does or does not know. Agent,  
10:00:04 15 do you know whether he was meeting with somebody for drugs  
10:00:04 16 or for a woman to have sex with? And I don't want to have  
10:00:04 17 to do that.

10:00:04 18 THE COURT: All right. I'm sorry, I had 38 was  
10:00:04 19 out.

10:00:04 20 MR. LOWELL: 38 is out. So did I, that's why.

10:00:04 21 THE COURT: But I'm going to let 39, 40 and 41?

10:00:04 22 MR. LOWELL: 40 and 41, that's out, you're  
10:00:04 23 putting it back in.

10:00:04 24 THE COURT: I never took it out. I have no  
10:00:04 25 cross out marks on here. I took out 42 and 43.

10:00:04 1 MR. LOWELL: Right. But 41 is room 810, 41 has  
10:00:04 2 been, that's the same issue as the one above, it's not a  
10:00:04 3 drug deal. And I have to do the same for that as I would  
10:00:04 4 have to do for that, and then the next one, call me is.

10:00:04 5 THE COURT: Call me is kind of point less, but  
10:00:04 6 whatever.

10:00:04 7 MR. LOWELL: How can I -- what do I deal with  
10:00:04 8 with Room 810 at Four Seasons, why is that relevant to the  
10:00:04 9 rebuttal point, the rebuttal point is he's in New York,  
10:00:04 10 that's not what he said as to why he can't be seen, they've  
10:00:04 11 already established that, that is as prejudicial as 38 when  
10:00:04 12 you say Room 810 at The Four Seasons, I can't possible deal  
10:00:04 13 with that, that's something I don't want them to have to  
10:00:04 14 open the door for unless they want to have him tried for  
10:00:04 15 using a prostitute, that's just wrong. How could that not  
10:00:04 16 be what you used the phrase unfair prejudice beyond the  
10:00:04 17 probative value in rebuttal, they got what they needed in  
10:00:04 18 the location.

10:00:05 19 THE COURT: Do you want to respond?

10:00:05 20 MR. HINES: I think we have argued this  
10:00:05 21 significantly. It shows he is in New York. It has zero  
10:00:05 22 location information, in New York, the message Room 810 at  
10:00:05 23 The Four Seasons is not unduly prejudicial, we're not going  
10:00:05 24 to be suggesting he's leaving with a prostitutes or whatever  
10:00:05 25 Mr. Lowell is saying, there is no evidence that is what he

10:00:05 1 is doing in these messages, I think it's fine --

10:00:05 2 THE COURT: The jury can decide whether -- so 2,  
10:00:05 3 3, 4 out. 12 out. 14, 15, 16, 17, 18, 19, 20, out. 22,  
10:00:05 4 out. 24, out.

10:00:05 5 MR. LOWELL: I'm sorry, what about 23 -- okay,  
10:00:05 6 24 out.

10:00:05 7 THE COURT: 28 out.

10:00:05 8 MR. LOWELL: No, 26, 27, 28, they said were out.

10:00:05 9 THE COURT: So are we in with Hallie's house or  
10:00:05 10 out?

10:00:05 11 MR. HINES: We're okay with out, but Mr. Lowell  
10:00:05 12 is reversed on the following page and then he asked for  
10:00:05 13 these to stay back in.

10:00:05 14 THE COURT: The question is 32 goes with 26 and  
10:00:05 15 27, either all in or all out.

10:00:05 16 MR. LOWELL: 26 and 27 are in, I'm sorry. 28  
10:00:05 17 you said was out. 30 is his geolocation at the 7-Eleven.

10:00:05 18 THE COURT: So 29 and 30 are in.

10:00:05 19 MR. HINES: I'm sorry, what did we say about 26  
10:00:05 20 through 28?

10:00:05 21 MR. LOWELL: We said 26 is in. 27 is in.

10:00:05 22 THE COURT: And then you don't need 28, right?  
10:00:05 23 Or do you need 28, it's at her house.

10:00:05 24 MR. HINES: We do because it shows that he does  
10:00:05 25 go back there.

10:00:05 1 MR. LOWELL: Goes back to Hallie's house.

10:00:05 2 THE COURT: 26, 27, 28, 29, 30 are in.

10:00:05 3 MR. LOWELL: I'm sorry, 29 is that -- okay, 29

10:00:05 4 is in. 30?

10:00:05 5 THE COURT: Is in?

10:00:05 6 MR. LOWELL: 31 is out.

10:00:05 7 THE COURT: 31 is out.

10:00:05 8 MR. LOWELL: What did we decide about 32?

10:00:05 9 THE COURT: I thought you wanted it in.

10:00:05 10 MR. LOWELL: Right the other ones are in, are

10:00:05 11 you up?

10:00:05 12 THE COURT: 35 is out.

10:00:05 13 MR. LOWELL: 33 is out.

10:00:05 14 THE COURT: No.

10:00:05 15 MR. LOWELL: 33 is in because he's with Hallie.

10:00:05 16 THE COURT: Yes.

10:00:05 17 MR. LOWELL: 34 he's still with Hallie.

10:00:05 18 THE COURT: 35 is out.

10:00:05 19 MR. LOWELL: 36 is out. 37 is out. 38 is out.

10:00:05 20 MR. WISE: Why don't we let you do it?

10:00:05 21 THE COURT: Are you ruling?

10:00:05 22 MR. LOWELL: No, I'm checking. I'm checking.

10:00:05 23 THE COURT: All right. 39, 40, 41 are in. 42

10:00:05 24 and 43 are out.

10:00:05 25 MR. LOWELL: Room 810 after you just got can you

10:00:05 1 hang out, I thought that one is out. They get 40 in. 38 is  
10:00:06 2 out. So why if 38 is out, 40 is in, if it's the same  
10:00:06 3 problem when they have the location data in between that  
10:00:06 4 tells where he is.

10:00:06 5 THE COURT: I think the difference is 38 -- 38  
10:00:06 6 says -- well, he says he's in New York, I don't remember why  
10:00:06 7 we're putting that out. But 39 you have the location data  
10:00:06 8 plus you have additional support for the fact that he was  
10:00:06 9 there at that location in the message.

10:00:06 10 MR. HINES: Correct.

10:00:06 11 MR. LOWELL: So tell me what -- I'm sorry, now  
10:00:06 12 I'm confused. 38 we decided is out.

10:00:06 13 THE COURT: Yes. I don't know why, if you want  
10:00:06 14 it in, we can put it in, but they agreed to take it out, so  
10:00:06 15 I was not fighting with people who want to take things out.

10:00:06 16 MR. LOWELL: Right. And then 40 that says Room  
10:00:06 17 810.

10:00:06 18 THE COURT: Four Seasons because it is the  
10:00:06 19 location data, 58th and Madison at The Four Seasons and  
10:00:06 20 that's additional evidence. I don't know what the call me  
10:00:06 21 does for you.

10:00:06 22 MR. LOWELL: Can you redact Room 810 and just  
10:00:06 23 say Four Seasons to confirm that, what room is just  
10:00:06 24 unnecessary, just redact that that says what room is he in,  
10:00:06 25 if the point that they say is to corroborate the location



10:00:06 1 data, that does it.

10:00:06 2 THE COURT: I'm going to leave the room in, but  
10:00:06 3 do you need 41?

10:00:06 4 MR. HINES: No.

10:00:06 5 THE COURT: Take out 41.

10:00:06 6 MR. LOWELL: 42 and 43.

10:00:06 7 THE COURT: Yes.

10:00:06 8 MR. HINES: We'll need about five minutes to  
10:00:06 9 update this summary chart.

10:00:06 10 THE COURT: All right. Do you want me to do  
10:00:06 11 this colloquy of your client on not testifying?

10:00:06 12 MR. LOWELL: Do you need to do that, can I just  
10:00:06 13 state it when I rest?

10:00:06 14 MR. HINES: No.

10:00:06 15 MR. WISE: No we need the colloquy.

10:00:06 16 THE COURT: I think we need the colloquy. Can  
10:00:06 17 you just bring him up here?

10:00:06 18 MR. LOWELL: Yes. Can I do that now?

10:00:06 19 THE COURT: All right. So I have to do this  
10:00:06 20 colloquy just to make sure that you knowingly decided not to  
10:00:06 21 testify. Okay?

10:00:06 22 THE DEFENDANT: Yes.

10:00:06 23 THE COURT: You understand you have the right to  
10:00:06 24 testify in your own defense?

10:00:06 25 THE DEFENDANT: I do.

10:00:06 1 THE COURT: If you don't testify, you understand  
10:00:06 2 your decision not to testify cannot be held against you and  
10:00:06 3 I will instruct the jury to that effect?

10:00:06 4 THE DEFENDANT: Agreed.

10:00:06 5 THE COURT: It's your decision and yours alone  
10:00:06 6 to make, do you understand that?

10:00:06 7 THE DEFENDANT: I do.

10:00:06 8 THE COURT: It's not your attorney's decision,  
10:00:06 9 it's not the government's decision, it's not my decision,  
10:00:06 10 you understand all that?

10:00:06 11 THE DEFENDANT: I do.

10:00:06 12 THE COURT: I do these for lots of different  
10:00:06 13 folks, so I understand you're a lawyer, but I'm going to do  
10:00:06 14 it anyway.

10:00:06 15 Did you make a decision not to testify  
10:00:06 16 voluntarily?

10:00:06 17 THE DEFENDANT: I did.

10:00:06 18 THE COURT: Did anyone threaten you or force you  
10:00:07 19 to make that decision?

10:00:07 20 THE DEFENDANT: No.

10:00:07 21 THE COURT: Do you feel like you're being  
10:00:07 22 pressured not to testify against your own will?

10:00:07 23 THE DEFENDANT: No.

10:00:07 24 THE COURT: Have you discussed if you should  
10:00:07 25 testify with your counsel?

10:00:07 1 THE DEFENDANT: I have.

10:00:07 2 THE COURT: Are you satisfied with the advice  
10:00:07 3 and representation you have gotten from him?

10:00:07 4 THE DEFENDANT: Yes.

10:00:07 5 THE COURT: Anything else?

10:00:07 6 MR. LOWELL: No.

10:00:07 7 THE COURT: Anything else?

10:00:07 8 MR. HINES: No.

10:00:07 9 THE COURT: All right. Thank you very much.

10:00:07 10 The other thing I was going to do is what I  
10:00:07 11 typically do for when we start closing is just to minimize  
10:00:07 12 disruption, I have them close off the doors, lock the doors,  
10:00:07 13 and anyone else who comes and goes will be in the overflow  
10:00:07 14 room. Any problems with that?

10:00:07 15 MR. LOWELL: No, I think if that's Your Honor's  
10:00:07 16 practice.

10:00:07 17 MR. HINES: We have no issue with that.

10:00:07 18 MR. LOWELL: A couple things at the bench just  
10:00:07 19 to have time saving, please. First, so we'll fix this.  
10:00:07 20 Then Agent Jensen will get to stand, we'll cross her as much  
10:00:07 21 as I am able on this. But before that, I have to rest, I  
10:00:07 22 have to renew my Rule 29, the material, and I expect you  
10:00:07 23 will say you reserve as you did, but I need to do that.

10:00:07 24 THE COURT: Absolutely.

10:00:07 25 MR. LOWELL: And then I have this one issue, did

10:00:07 1 you check in terms of before I rest, I have to move in your  
10:00:07 2 Exhibit 31 A if you said it hasn't been.

10:00:07 3 MR. HINES: That's fine, we have no objection.

10:00:07 4 MR. LOWELL: Can we do that now, is that  
10:00:07 5 already --

10:00:07 6 THE COURT: It's admitted.

10:00:07 7 MR. LOWELL: So without any objection, we have  
10:00:07 8 moved in government Exhibit 31A so I don't have do that.

10:00:07 9 THE COURT: Admitted.

10:00:07 10 (Government Exhibit No. 31A was admitted into  
10:00:07 11 evidence.)

10:00:07 12 MR. LOWELL: Anything else I missed? No, I  
10:00:07 13 don't want to do that. He's good. I think that's it.

10:00:07 14 THE COURT: Okay. So that's all fine, you can  
10:00:07 15 do all of that -- so you haven't rested yet, so you can't  
10:00:07 16 make your motion.

10:00:07 17 MR. LOWELL: I haven't rested yet, but I can't  
10:00:07 18 make my motion. I guess for the purposes --

10:00:07 19 THE COURT: You can just say Your Honor, I renew  
10:00:07 20 my motion, and I'll say thank you, I reserve.

10:00:07 21 MR. LOWELL: Okay. And then timing wise, how do  
10:00:07 22 we do this, it's 10:00, so this will take a little time for  
10:00:07 23 their rebuttal case, do they rest again, I have forgotten --

10:00:07 24 MR. HINES: I'm sorry?

10:00:07 25 MR. LOWELL: Do you rest after you do a rebuttal

10:00:07 1 case, I don't know that you say that on a rebuttal case, I  
10:00:07 2 don't think so. Where do we go from there?

10:00:07 3 THE COURT: What I typically do, I typically do  
10:00:07 4 jury instructions first.

10:00:07 5 MR. LOWELL: I thought you said last.

10:00:07 6 THE COURT: What I usually do is jury  
10:00:07 7 instructions up to the point where I tell the jury what they  
10:00:07 8 have to do when they go back into the jury room.

10:00:07 9 MR. LOWELL: It would be my request that you do  
10:00:07 10 the jury instructions at one time in a continuous basis  
10:00:07 11 after argument. I saw that in your materials somewhere,  
10:00:08 12 that's what -- is there any good reason not, let the lawyers  
10:00:08 13 talk and then you instruct them what the lawyers say  
10:00:08 14 afterwards before we open our mouths or would it be better  
10:00:08 15 afterwards after we argue?

10:00:08 16 THE COURT: Okay. Look, I'm fine with that.

10:00:08 17 MR. LOWELL: And then lastly, in terms of the  
10:00:08 18 timing of the rest of the day, it might make sense depending  
10:00:08 19 on how long they are for them to do theirs, there should be  
10:00:08 20 a break. I don't want to be interrupted for a lunch break  
10:00:08 21 for example, for closing, I don't know how all that's going  
10:00:08 22 to play out time wise.

10:00:08 23 THE COURT: Let's figure out where we are.

10:00:08 24 MR. LOWELL: Thank you.

10:00:08 25 (End of side-bar.)

10:00:08 1 COURT CLERK: All rise.

10:00:08 2 (A brief recess was taken.)

10:28:31 3 COURTROOM DEPUTY: All rise.

10:28:34 4 THE COURT: All right. Bring the jury in.

10:28:47 5 (Jury entering the courtroom at 10:28 a.m.)

10:29:05 6 THE COURT: All right, everyone. Welcome back.

10:29:07 7 Please be seated.

10:29:08 8 All right. Members of the jury, I hope you

10:29:11 9 enjoyed your weekend. I have to ask you questions because

10:29:15 10 it wouldn't be morning if I didn't ask you these questions.

10:29:18 11 So, did anyone talk to anyone about this case or anyone

10:29:21 12 involved in this case over the weekend?

10:29:24 13 JURY: No.

10:29:24 14 THE COURT: All right. Did anyone try and talk

10:29:26 15 to you about this case or anyone involved in this case?

10:29:30 16 JURY: No.

10:29:31 17 THE COURT: All right. Were you present when

10:29:33 18 other people were talking about this case or anyone involved

10:29:36 19 in this case?

10:29:37 20 JURY: No.

10:29:38 21 THE COURT: Did you read anything about this

10:29:40 22 case?

10:29:41 23 JURY: No.

10:29:42 24 THE COURT: Well, watch anything on TV, listen

10:29:45 25 to anything on the radio, the internet or podcasts or



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10:29:48 1 whatever?

10:29:49 2 JURY: No.

10:29:49 3 THE COURT: All right. And did you do any  
10:29:51 4 research on this case?

10:29:53 5 JURY: No.

10:29:53 6 THE COURT: All right. Thank you so much.

10:29:56 7 We're in the home stretch here.

10:29:59 8 Mr. Lowell.

10:30:01 9 MR. LOWELL: Thank you, Your Honor. Good  
10:30:03 10 morning, ladies and gentlemen.

10:30:04 11 On the completion of what we did on Friday,  
10:30:13 12 Mr. Biden rests his case with the admission of that exhibit.  
10:30:17 13 And we renew our previous motion.

10:30:20 14 THE COURT: All right. Thank you very much. I  
10:30:22 15 will reserve on that.

10:30:24 16 Mr. Hines, anything from the government?

10:30:26 17 MR. HINES: Yes. In rebuttal, Your Honor, the  
10:30:29 18 United States calls Special Agent Erika Jensen.

10:30:36 19 THE COURT: Special Agent Jensen, I'll just  
10:30:38 20 remind you you're still under oath.

10:30:45 21 THE WITNESS: Yes.

10:30:46 22 DIRECT EXAMINATION

10:30:46 23 BY MR. HINES:

10:30:48 24 Q. Agent Jensen, Naomi Biden testified on Friday,  
10:30:51 25 correct?

10:30:51 1 A. Yes.

10:30:51 2 Q. And during her testimony, was she asked when the  
10:30:56 3 defendant drove a truck up, if she recalled about what day  
10:30:59 4 it was in October, was that October 15th?

10:31:02 5 MR. LOWELL: Objection, Your Honor, it misstates  
10:31:04 6 the evidence, it was that he drove the Cadillac up.

10:31:09 7 MR. HINES: Rephrase.

10:31:11 8 BY MR. HINES:

10:31:11 9 Q. Was Ms. Biden asked when he drove it up, do you  
10:31:15 10 recall about what day it was in October, was it  
10:31:18 11 October 15th?

10:31:19 12 A. Yes.

10:31:19 13 Q. And did Ms. Biden answer, "yeah"?

10:31:21 14 A. Yes.

10:31:22 15 Q. Over the course of the weekend, did you do anything  
10:31:26 16 to investigate when, in fact, Mr. Biden was -- went up to  
10:31:31 17 New York?

10:31:31 18 A. Yes. I took a look at both the banking data and the  
10:31:35 19 extraction reports to see if I could get any further  
10:31:39 20 information about where Mr. Biden was, in particular on  
10:31:44 21 these days to try to frame out the sequence as best I could.

10:31:48 22 Q. Did your review of that data show that he was still  
10:31:52 23 in Delaware on October 16th, 2018?

10:31:54 24 A. Yes.

10:31:55 25 Q. Specifically, did you identify information in the

10:31:58 1 back ups showing a 7-Eleven location that was associated  
10:32:04 2 with a photograph, movies, on his phone?

10:32:08 3 A. Yes.

10:32:09 4 Q. That 7-Eleven location, did you look for more  
10:32:13 5 messages to corroborate whether in fact Mr. Biden went to  
10:32:17 6 that 7-Eleven in that week prior?

10:32:18 7 A. Yes.

10:32:19 8 Q. Did you prepare a summary chart limited to that sort  
10:32:22 9 of information during that week prior to his trip to New  
10:32:29 10 York and his trip to New York?

10:32:30 11 A. Yes.

10:32:31 12 Q. Is that summary chart Government's Exhibit 125 A?

10:32:43 13 A. Yes.

10:32:44 14 MR. HINES: Move for the admission of 125 A.

10:32:47 15 THE COURT: No further.

10:32:48 16 MR. LOWELL: No further.

10:32:49 17 THE COURT: All right. Thank you. It's  
10:32:50 18 admitted.

10:32:51 19 (Government's Exhibit No. 125A was admitted into  
10:32:52 20 evidence.)

10:32:52 21 BY MR. HINES:

10:32:53 22 Q. All right. So the first row we're going to look at  
10:32:55 23 is actually Row 29 and 30, Ms. Vo on page 3, you can pull up  
10:33:06 24 rows 29 and 30. What do rows 29 and 30 in the summary chart  
10:33:12 25 show?

10:33:13 1 A. So this is pulled from one of the extraction reports  
10:33:18 2 and what it shows is there was, it was either a movie or an  
10:33:24 3 image, it's something with the way Apple saved the data, but  
10:33:28 4 it included location data, and the location if you would put  
10:33:31 5 that 39.7 minus 75 in Google Maps, it will pull up a  
10:33:36 6 location. And those locations when I put them in the map  
10:33:39 7 came up as 7-Eleven, either right at or right next to the  
10:33:44 8 7-Eleven in Wilmington at the corner of Lancaster and  
10:33:49 9 Greenhill, I think.

10:33:50 10 Q. So just based on the fact that the movies depict that  
10:33:54 11 location, can you tell definitively if the defendant was in  
10:33:59 12 fact at that 7-Eleven at that time?

10:34:01 13 A. No.

10:34:01 14 Q. Did you look at other evidence to see whether the  
10:34:05 15 defendant frequented that location prior to this date?

10:34:07 16 A. Yes.

10:34:08 17 Q. We're going to start at the beginning of the chart,  
10:34:12 18 Row 1. Does page 1 include some of the messages showing  
10:34:19 19 references to 7-Eleven?

10:34:20 20 A. Yes.

10:34:21 21 Q. What is the date of the first message that you pulled  
10:34:25 22 on this exhibit?

10:34:26 23 A. The earliest message is dated October 9th, 2018.

10:34:30 24 Q. That's three days prior to the gun purchase, correct?

10:34:35 25 A. Yes.

10:34:35 1 Q. What is shown in the first row, can you please  
10:34:40 2 describe that message?

10:34:40 3 A. Sure. So it's again, like the other summary chart  
10:34:44 4 with the date, the time is actually UTC time, so it's a  
10:34:47 5 little bit off by four hours, it shows a date and time, who  
10:34:51 6 the message is from, the telephone number in this case, who  
10:34:54 7 the message was to, and then what we are looking at when you  
10:34:58 8 see the SMS, you're looking at the actual content from the  
10:35:02 9 extraction report and that shows the very same thing, in the  
10:35:05 10 very bottom is the contents of the message.

10:35:07 11 Q. And does the 302 number send a message to the  
10:35:11 12 defendant?

10:35:11 13 A. Yes.

10:35:12 14 Q. And what does the message read?

10:35:14 15 A. It says, "hey, this junior the one you got that at  
10:35:18 16 the 7-Eleven."

10:35:20 17 Q. Now the following day, does the defendant on  
10:35:24 18 October 10th, 2018, write back to that 302 number?

10:35:28 19 A. Yes.

10:35:29 20 Q. And what does the defendant say?

10:35:34 21 A. So this message is from the defendant to that 302  
10:35:38 22 number and it says "can you meet me at 7-Eleven now?"

10:35:42 23 Q. And then what is the following message on Row 6?

10:35:47 24 A. It's a response almost immediately saying "I BWT off  
10:35:53 25 at 330."

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- 10:35:55 1 Q. And then how does the defendant respond?
- 10:35:58 2 A. Question mark.
- 10:35:59 3 Q. And then how does the 302 number reply?
- 10:36:03 4 A. "I have get off at 330 I can call you when I am on my
- 10:36:09 5 way."
- 10:36:10 6 Q. The time reference there to 3:30, I note the column
- 10:36:17 7 on the left says 4:49 p.m., what does 4:49 p.m. reflect?
- 10:36:22 8 A. That would be UTC time, so that would be four hours
- 10:36:25 9 later than eastern time for the time it was in Wilmington.
- 10:36:28 10 It would have been before 3:30 when he sent that message.
- 10:36:32 11 Q. Turning to Row 9, how does the defendant respond?
- 10:36:36 12 A. With a "K".
- 10:36:39 13 Q. And then how does the 30 number reply?
- 10:36:44 14 A. Almost at the exact same time, "IGHT".
- 10:36:51 15 Q. What does the 302 number say?
- 10:36:53 16 A. "You want the same."
- 10:36:55 17 Q. So this is October 10th, two days prior to the gun
- 10:36:59 18 purchase; correct?
- 10:37:00 19 A. Yes.
- 10:37:01 20 Q. Now the following day, October 11th, did you identify
- 10:37:04 21 another message with this same individual?
- 10:37:07 22 A. Yes.
- 10:37:07 23 Q. What does that message say?
- 10:37:09 24 A. It says "it's Q, I'm at 7-Eleven now."
- 10:37:15 25 Q. The 302 number, perhaps Q, is sending this to Hunter



10:37:19 1 **Biden?**

10:37:19 2 A. **Yes.**

10:37:20 3 Q. **On this same day, October 11th, does the 302 number**

10:37:25 4 **send another message in Row 21?**

10:37:27 5 A. **Yes. Some number of hours later, eight hours later**

10:37:33 6 **or nine. It says "yo, it's Q (smiley face). Hoping my**

10:37:39 7 **texts reached you. Already lost cell. This number is a**

10:37:44 8 **contact number for me, feel free to hit me back...."**

10:37:48 9 Q. **So the 302 number in Row 13 and the 302 number in**

10:37:52 10 **number 21 are different numbers, correct?**

10:37:54 11 A. **Yes.**

10:37:55 12 Q. **But the person who is sending the message identifies**

10:37:59 13 **himself as Q in both messages, correct?**

10:38:01 14 A. **Yes.**

10:38:01 15 Q. **Turning to Row 23 on this same date, October 11th,**

10:38:05 16 **does the defendant respond to the 302 number that ends in**

10:38:11 17 **9246?**

10:38:12 18 A. **Yes.**

10:38:13 19 Q. **What does the defendant say?**

10:38:15 20 A. **"Meet me 7-Eleven at three."**

10:38:18 21 Q. **Again the time stamp is 6:41 p.m. How does that**

10:38:22 22 **correlate to what the actual time is that day?**

10:38:25 23 A. **So it would be four hours earlier. So it would be**

10:38:30 24 **4:03.**

10:38:33 25 Q. **The message would have been sent at 2:41 once you do**

10:38:37 1 the conversion?

10:38:38 2 A. Yes.

10:38:39 3 Q. Turning to Row 25, in the course of looking for  
10:38:42 4 messages identifying 7-Eleven to see if the defendant  
10:38:46 5 frequented that location, was there also a message that we  
10:38:50 6 had utilized in your previous summary chart that referenced  
10:38:53 7 7-Eleven?

10:38:54 8 A. Yes.

10:38:54 9 Q. And just for reference, what does that message say in  
10:38:57 10 Row 25 and who is it sent by?

10:38:59 11 A. This message is sent by Mr. Biden to Hallie Biden, it  
10:39:06 12 says "yes Bernard who hangs at 7-Eleven on Greenhill and  
10:39:10 13 Lancaster. I'm now off MD Avenue behind Blue Rocks Stadium  
10:39:15 14 waiting for a dealer named Mookie."

10:39:18 15 Q. So there are messages in which the defendant was  
10:39:20 16 referencing 7-Eleven both before and now after the gun  
10:39:24 17 purchase, is that right?

10:39:24 18 A. Yes.

10:39:25 19 Q. Turning to October 16th, did you find additional  
10:39:34 20 messages in these next rows that show the defendant in  
10:39:36 21 Delaware?

10:39:36 22 A. Yes.

10:39:37 23 Q. What does Row 26 say?

10:39:39 24 A. Row 26 is at, this now is the correct time, so the  
10:39:45 25 bubble will have the UTC minus four, so this is 2:19 a.m.,

10:39:50 1 and it's from Mr. Biden to Hallie Biden on the 16th, it says  
10:39:55 2 "I'm almost there." And then maybe over an hour later,  
10:40:00 3 there is a message again saying, "I'm here. Can't get in."

10:40:05 4 Q. Now turning to page 3, Row 28, did you identify  
10:40:10 5 location information, which put him in the vicinity of  
10:40:14 6 Hallie Biden's residence?

10:40:16 7 A. Yeah, this first one is at 4:16, it's the earliest  
10:40:20 8 one I could find, it does show the location in the vicinity.

10:40:24 9 Q. And that's in the middle of the night at 4:16 a.m.;  
10:40:28 10 correct?

10:40:28 11 A. At this point it's 4:16 a.m.

10:40:32 12 Q. Now turning to the next row, Row 29, from Ms. Biden's  
10:40:38 13 house, where does the location information show that  
10:40:43 14 Mr. Biden's phone went?

10:40:45 15 A. So, that changes at 5:05 a.m., with a different GPS  
10:40:52 16 coordinate, so when I map those, it came up at a 7-Eleven.

10:40:58 17 Q. And turning to the next row, Row 30, is this  
10:41:03 18 approximately seven minutes later, another movie that has a  
10:41:08 19 geolocation information placing it at the 7-Eleven?

10:41:12 20 A. Yes.

10:41:13 21 Q. And that 7-Eleven is on Lancaster Avenue, correct?

10:41:19 22 A. Yes, that's the intersection of Lancaster and  
10:41:23 23 Greenhill in Wilmington.

10:41:27 24 Q. Then does the defendant send a message in Row 32?

10:41:31 25 A. Yes.

10:41:32 1 Q. What does the message say and who is it sent to?

10:41:36 2 A. Mr. Biden sent a message to Hallie Biden saying "are  
10:41:40 3 you up?"

10:41:42 4 Q. This is at approximately 5:41 in the morning?

10:41:45 5 A. Yes, correct.

10:41:45 6 Q. The next row, Row 33, what does Row 33 show?

10:41:49 7 A. This is a couple of more items of location data,  
10:41:52 8 either an image or a movie file and they both indicated back  
10:41:57 9 to her, the vicinity of her residence.

10:42:00 10 Q. So the testimony we heard Friday about October 15th,  
10:42:03 11 in fact Mr. Biden was still in Delaware on October 16th, is  
10:42:08 12 that right?

10:42:08 13 A. Yes, this data, along with financial data, indicated  
10:42:12 14 that he was still in the greater Wilmington area.

10:42:15 15 Q. Now, rows 33 and 34 show he's in the vicinity of  
10:42:21 16 Ms. Biden's residence in Greenville, Delaware, is that  
10:42:25 17 correct?

10:42:25 18 A. Yes.

10:42:25 19 Q. Turning to Row 39, were you able to identify  
10:42:28 20 information from the defendant's devices that showed when he  
10:42:33 21 in fact went up to New York?

10:42:34 22 A. Yes, and again the data is a combination of both the  
10:42:37 23 financial and the location data and other messages.

10:42:47 24 Q. What does Row 39 show?

10:42:48 25 A. So this is a location point when you map it, it comes

10:42:53 1 out to be 58th and Madison Avenue, New York at 1018, 12:36  
10:43:04 2 p.m., that's adjacent to what's now the Midtown, Four  
10:43:08 3 Seasons hotel is closed.

10:43:10 4 Q. What does the defendant say in Row 40?

10:43:14 5 A. So this is a little bit earlier in the day, it was  
10:43:18 6 reversed chronologically, but room 810, Four Seasons.

10:43:24 7 Q. With respect to the 7-Eleven. With respect to the  
10:43:27 8 7-Eleven that we identified in the summary chart, in his  
10:43:32 9 book, did the defendant also reference meeting individuals  
10:43:35 10 in front of 7-Eleven's?

10:43:37 11 A. Yes.

10:43:37 12 Q. Turning to Exhibit 19, page 208, directing your  
10:43:43 13 attention to the final paragraph, does Mr. Biden state "no  
10:43:48 14 dealer works off a user's urgent time table, so you arrange  
10:43:53 15 to meet in front of a 7-Eleven on such and such street, and  
10:43:57 16 then sit in your car and wait"?

10:43:58 17 A. Yes.

10:43:59 18 MR. HINES: No further questions, Your Honor.

10:44:01 19 THE COURT: Thank you. Cross-examine, rebuttal.

10:44:04 20 MR. LOWELL: Thank you.

10:44:05 21 CROSS-EXAMINATION

10:44:05 22 BY MR. LOWELL:

10:44:05 23 Q. Hello again. I wanted to start where he started.

10:44:11 24 He started by being asked a question about  
10:44:13 25 whether Hunter's daughter, Naomi, had said when asked when

10:44:19 1 Hunter got to New York, it was quote "about" a date, and  
10:44:22 2 then she said when I suggested the 15th, and she said  
10:44:25 3 "yeah", right?

10:44:27 4 A. Yes.

10:44:27 5 Q. That's what she said. The date that you have figured  
10:44:31 6 out that he got to New York was just two days later, is that  
10:44:34 7 right?

10:44:34 8 A. I believe he went on the 17th.

10:44:35 9 Q. That would be two days later?

10:44:37 10 A. Yes.

10:44:38 11 Q. And I want to start therefore with the texts you  
10:44:44 12 said, the first text, do we have the first three or can we  
10:44:52 13 put it on the screen? Okay. You can leave it just like  
10:44:53 14 that. So you started by trying to figure out when he got to  
10:44:56 15 New York, right, and that was now we establish on the 17th?

10:44:59 16 A. Yes. That was a little broader than that, but  
10:45:03 17 essentially in this whole period I was looking to see what I  
10:45:06 18 could figure out timetable wise where he was.

10:45:10 19 Q. Got it. Okay. So you started by the 17th minus  
10:45:15 20 eight, you started with October 9th, that's eight days prior  
10:45:19 21 to when you just said he gets to New York; right, on the  
10:45:22 22 ninth?

10:45:23 23 A. I looked at the bank statements first and I went back

10:45:27 24 --

10:45:27 25 Q. I'm sorry, I didn't mean -- sorry, I want to talk



10:45:32 1 about the same chart?

10:45:33 2 A. Sure.

10:45:33 3 Q. So the chart says October 9th?

10:45:35 4 A. Yes, that's the earliest entry in the chart yes.

10:45:38 5 Q. So on the first one on the 9th at whatever time, it  
10:45:41 6 says somebody is typing "hey, this is junior the one you  
10:45:44 7 just identified at 7-Eleven", right?

10:45:46 8 A. Yes.

10:45:47 9 Q. To be clear, in Mr. Biden's book, or as you just  
10:45:52 10 said, there were occasions where the book or other data  
10:45:55 11 would indicate that he could be buying drugs at a 7-Eleven,  
10:45:58 12 right?

10:45:58 13 A. He discussed that along with liquor stores and other  
10:46:01 14 gas stations that he would yes, absolutely.

10:46:03 15 Q. Those are also in that same vicinity. There is a gas  
10:46:07 16 station, there is a car wash, did you check for that?

10:46:09 17 A. I did, there is actually a gas station next door to  
10:46:12 18 the 7-Eleven.

10:46:13 19 Q. So when you're talking about the 7-Eleven and its  
10:46:16 20 location as you pointed out, there are other things right in  
10:46:18 21 that vicinity?

10:46:19 22 A. Yes.

10:46:19 23 Q. And on occasion, you were asked by Mr. Hines to look  
10:46:25 24 at the phone or look at the data and you were able to do  
10:46:29 25 that and get a location and you did that because sometimes

10:46:33 1 there might be something that you could find, right, and you  
10:46:35 2 were looking for that?

10:46:36 3 A. Yes.

10:46:36 4 Q. And notice on those first few when it says something  
10:46:39 5 about the 7-Eleven, you have no location data to determine  
10:46:42 6 if he was there or ever went, do you?

10:46:44 7 A. That's correct, I do not have any location data.

10:46:47 8 Q. And then you kept going and you said, again, this  
10:46:52 9 person who is texting with him back and forth a few times,  
10:46:56 10 that's on the next day again, the 10th, right?

10:46:59 11 A. Yes.

10:47:00 12 Q. And Mr. Hines asked you isn't that two days before he  
10:47:03 13 purchased the gun at StarQuest, right?

10:47:07 14 A. Yes.

10:47:08 15 Q. So we know those two days exist, but you don't know  
10:47:11 16 whether he met up with this person or whether this was an  
10:47:15 17 exchange that never happened. Take a look?

10:47:17 18 A. Yes. From my interpretation I believe that it's  
10:47:21 19 unclear.

10:47:22 20 Q. Indeed. And do you know as well that from your many  
10:47:26 21 hours of investigation and doing what you did this weekend  
10:47:29 22 that on the 11th -- I'm sorry, before we get there. Strike  
10:47:33 23 that. Then we're on the 10th, I notice later you find  
10:47:37 24 location data, but there is nothing on the 10th that you did  
10:47:40 25 either, is there, that actually confirms where he is on the

10:47:43 1 10th?

10:47:44 2 A. Correct.

10:47:46 3 Q. And then I was saying that you then go the next day  
10:47:49 4 to the 11th on the chart that's the next day. Now, you did  
10:47:55 5 a lot of investigation to figure out where he was, correct?

10:47:59 6 A. As I stated, I looked through all the financial  
10:48:02 7 records and all the extraction records for anything I could  
10:48:05 8 find.

10:48:05 9 Q. On the 11th, you also know he went to Philadelphia  
10:48:09 10 where his daughter Finnegan lives?

10:48:11 11 A. Yes, I do know that, in the evening I think.

10:48:13 12 Q. That's where he was headed that day and that's where  
10:48:15 13 he went, right?

10:48:16 14 A. Yes.

10:48:17 15 Q. And then on the Row 23, again, this back and forth,  
10:48:21 16 and by the way, do you notice that when whoever is writing  
10:48:25 17 him, there is often a text by that person, a text by that  
10:48:28 18 person, and a text by that person, and then there could be  
10:48:32 19 hours before Mr. Biden responds, right?

10:48:36 20 A. There were definitely breaks in conversations, I  
10:48:40 21 can't tell you from memory because not every text is  
10:48:43 22 depicted here what those breaks are.

10:48:45 23 Q. I understand, but there were breaks for sure?

10:48:48 24 A. Yes.

10:48:48 25 Q. But then on the 23rd which is on the 11th, the day

10:48:51 1 you know he went to Philadelphia depending on what we're  
10:48:56 2 talking about, the time, 23 would be, if you did the  
10:48:58 3 conversion, 2:41 in the afternoon, UTC is confusing?

10:49:05 4 A. Yes.

10:49:05 5 Q. And he writes "meet me at 7-Eleven at 3:00", do you  
10:49:10 6 see that?

10:49:10 7 A. Yes.

10:49:10 8 Q. Now right there, right then, right time before --  
10:49:16 9 where was the location data as to whether he ever went that  
10:49:19 10 day, I didn't see it?

10:49:21 11 A. Yeah, I don't have it there.

10:49:23 12 Q. Okay. And then Mr. Hines asked you, 23 and 24 skips  
10:49:29 13 two days later, right, now we're on the 13th, right?

10:49:32 14 A. Yes.

10:49:32 15 Q. And that would be after you went to Philadelphia and  
10:49:36 16 came back then?

10:49:37 17 A. Yes. I don't know if he spent the night in  
10:49:40 18 Philadelphia, but I do see a record that he went that  
10:49:44 19 evening to meet his daughter.

10:49:45 20 Q. And then you were identifying texts with something  
10:49:48 21 that said Q, do you remember that, a guy named Q or somebody  
10:49:53 22 who identified themselves as Q, right?

10:49:55 23 A. Yes.

10:49:56 24 Q. In this exchange, prior, not a guy named Bernard,  
10:50:02 25 right?

Jensen - cross - rebuttal

- 10:50:03 1 A. Correct, I do not see a reference.
- 10:50:05 2 Q. Not a guy named Mookie, right?
- 10:50:07 3 A. No.
- 10:50:08 4 Q. And then as we're going down, we're on the 16th, on  
10:50:12 5 rows 26 and 27, do you see that?
- 10:50:14 6 A. Yes.
- 10:50:14 7 Q. And in that, in the morning, I'm trying to decide if  
10:50:19 8 it's UTC. Yeah. So on the 16th, Row 26, at 2:00 a.m. in  
10:50:26 9 the morning, he's not texting to any of those people, he's  
10:50:30 10 texting to Hallie Biden?
- 10:50:32 11 A. Yes.
- 10:50:32 12 Q. And asks "I'm almost there", right?
- 10:50:35 13 A. Yes.
- 10:50:36 14 Q. Do you know where he was coming from on the 16th to  
10:50:40 15 say I'm almost there?
- 10:50:41 16 A. No.
- 10:50:42 17 Q. And then an hour later, I mean -- I'm sorry, do you  
10:50:49 18 know -- I'm sorry to have asked this, I didn't ask that  
10:50:52 19 right. You don't know if he was coming from right around  
10:50:54 20 there or from a distance, Philadelphia or somewhere else,  
10:50:59 21 when he says I'm almost there?
- 10:51:01 22 A. Correct.
- 10:51:01 23 Q. And then a long time -- well not a long time, an  
10:51:05 24 hour-and-a-half passes and then the next text that says "I'm  
10:51:08 25 here, can't get in." That's still to Hallie, right?

10:51:12 1 A. Yes.

10:51:12 2 Q. And on Row 28, you could then have location data,  
10:51:17 3 which indicated that he was actually in the vicinity of  
10:51:22 4 where Ms. Biden and the house she owned with her ex-husband  
10:51:26 5 and his -- or deceased husband and his brother lived, right?

10:51:31 6 A. Yeah, I believe it was the first location I found  
10:51:33 7 that morning.

10:51:34 8 Q. So you know that he was there. And by the way, you  
10:51:36 9 said you could do that by looking for videos or movies or  
10:51:42 10 photos or texts, there are no movies during this period of  
10:51:45 11 time with him and Q and Mookie or anybody, just what you  
10:51:48 12 were able to find for the purposes of doing location data, I  
10:51:51 13 don't see it presented here?

10:51:53 14 A. There were no movies that were in the data that I had  
10:51:57 15 that could be played and there were thumbnail images  
10:52:01 16 representative of some of the data points.

10:52:02 17 Q. I'm sorry, let me move on to the next time period,  
10:52:05 18 the next time slot. So you can see that at 4:16 on Row 26,  
10:52:12 19 Hallie Biden hasn't responded to him that hour in the early  
10:52:17 20 morning hours at that point, right, when he's asked "I'm  
10:52:20 21 here and can't get in", right?

10:52:22 22 A. Yes. 3:55 a.m., "I'm here, can't get in".

10:52:26 23 Q. Right. So at that hour at four something in the  
10:52:29 24 morning, five in the morning, you then have him going back  
10:52:32 25 to the 7-Eleven at 5 o'clock in the morning, right?



- 10:52:38 1 A. Yes.
- 10:52:38 2 Q. Row 29?
- 10:52:39 3 A. But as far as the 16th, I think that's the first time
- 10:52:43 4 I have location data at the 7-Eleven on the 16th.
- 10:52:47 5 Q. So when you have indicated that he said I can't get
- 10:52:50 6 in, the location data has him going back to the 7-Eleven at
- 10:52:57 7 5:00 a.m. in the morning?
- 10:52:59 8 A. Right.
- 10:52:59 9 Q. Was he going there to meet Q or get a cup of coffee
- 10:53:04 10 before Hallie wrote him back?
- 10:53:06 11 A. I don't know.
- 10:53:06 12 Q. And then at -- he's still at the 7-Eleven according
- 10:53:11 13 to your chart, and then not even 30 minutes later, Row 32,
- 10:53:15 14 he asked, "are you up?" Right?
- 10:53:20 15 A. Yes.
- 10:53:20 16 Q. Still apparently waiting for her to be up, if he
- 10:53:25 17 wrote "are you up", it would generally indicate that he has
- 10:53:27 18 not responded and he's still waiting?
- 10:53:29 19 A. Yes, my interpretation was that he had not been able
- 10:53:33 20 to get a hold of her.
- 10:53:34 21 Q. And then he was -- he wrote that you say at the
- 10:53:38 22 7-Eleven?
- 10:53:39 23 A. Well, the --
- 10:53:40 24 Q. I'm sorry, the time stamp before on 30?
- 10:53:43 25 A. It was closer in the time that he was already back at

10:53:47 1 the residence than when he was at -- this does not indicate  
10:53:51 2 every location.

10:53:52 3 Q. If you're putting together a sequence from every  
10:53:55 4 point in the morning and he's writing the person he was  
10:53:58 5 involved with at various times, if you look at this, it's  
10:54:01 6 the hours in the early morning hours and "are you up", and  
10:54:04 7 he was waiting, according to your location, at the 7-Eleven?

10:54:07 8 A. I think he goes, he can't get in, I think he leaves  
10:54:10 9 and then he comes back over some time and tries again.

10:54:14 10 Q. As I said to you, when he's at the 7-Eleven, you see  
10:54:17 11 no reference to anybody back and forth other than with  
10:54:21 12 Hallie Biden?

10:54:22 13 A. Correct.

10:54:22 14 Q. And I think I asked this, but if not, I will, so at  
10:54:26 15 that early morning hour when he goes back to the 7-Eleven,  
10:54:30 16 you don't know whether it was for a donut, a coffee, I don't  
10:54:33 17 think anybody eats a slurpy at that point, but you don't  
10:54:37 18 know?

10:54:37 19 A. No, I have no further context.

10:54:39 20 Q. And then we get to when Mr. Biden actually got to New  
10:54:42 21 York, which you were looking at line 39, and that is on the  
10:54:48 22 18th; right, do you see that?

10:54:52 23 A. Yes.

10:54:53 24 Q. And Naomi, his daughter actually said the 18th was a  
10:55:00 25 time that Hunter was in New York where he was; right?

10:55:05 1 A. I don't recall her testimony specifically but I think  
10:55:08 2 that's reasonable that at this point he was in New York and  
10:55:12 3 she would have thought that.

10:55:13 4 Q. There is nothing that she said that disagrees with  
10:55:16 5 what you put on 39?

10:55:19 6 A. I don't believe so.

10:55:20 7 Q. And you have -- this is an example on 39 where you  
10:55:23 8 have location data to confirm that, right?

10:55:26 9 A. Correct. In this case --

10:55:28 10 Q. Sorry, I didn't mean to cut you off. Please.

10:55:31 11 A. In this case, my purpose was just to figure out where  
10:55:34 12 he was on each day, this is a location point I was able to  
10:55:38 13 find that correlated with messages that indicated he was  
10:55:41 14 where he was saying, he was in New York at The Four Seasons.

10:55:44 15 Q. Whereas in some other locations back and forth where  
10:55:48 16 somebody says come to the 7-Eleven or don't come, or I'm  
10:55:51 17 coming at 3:30, what I went over with you, you didn't find  
10:55:55 18 that location data, did you?

10:55:56 19 A. Sometimes we have location data without text  
10:55:59 20 messages, sometimes we have text messages without location  
10:56:02 21 data.

10:56:02 22 Q. And then Row 40 after we established he's in New  
10:56:06 23 York, and Naomi is in New York, and Naomi also mentioned  
10:56:09 24 that she was there with her now husband Peter, right?

10:56:14 25 A. Yes.

10:56:14 1 Q. That's where he confirms he's staying at the Four  
10:56:18 2 Seasons and what room he's at?

10:56:19 3 A. Yes.

10:56:20 4 MR. LOWELL: Thank you, agent. No further  
10:56:21 5 questions.

10:56:24 6 REDIRECT EXAMINATION

10:56:25 7 BY MR. HINES:

10:56:26 8 Q. Agent Jensen, we heard on Friday the testimony about  
10:56:30 9 the defendant saying he was unreachable in New York. Do you  
10:56:34 10 remember that testimony?

10:56:35 11 A. Yes.

10:56:35 12 Q. Just to be clear, Row 40, that's not a message to  
10:56:40 13 Naomi Biden; correct?

10:56:42 14 A. No, it's a different individual.

10:56:45 15 MR. HINES: No further questions for this  
10:56:47 16 witness, Your Honor.

10:56:48 17 At this time, the United States has no further  
10:56:51 18 rebuttal, and we rest our case.

10:56:54 19 THE COURT: All right. Thank you.

10:56:55 20 Thank you, agent, you are excused.

10:56:59 21 All right. Let me see counsel up here for a  
10:57:03 22 moment.

10:57:03 23 (Side-bar discussion:)

11:18:38 24 THE COURT: It's 11:00. How long is your  
11:18:38 25 closing?

11:18:38 1 MR. WISE: Your Honor, I'm going to be giving  
11:18:38 2 it. Our request is that you instruct now and they have  
11:18:38 3 their lunch, they get refreshed after the instructions which  
11:18:38 4 afternoon with be a little taxing and then we do the  
11:18:38 5 closing. Looking at the length of the instructions, I think  
11:18:39 6 we'll definitely be able to do that before we break for  
11:18:39 7 lunch.

11:18:39 8 MR. LOWELL: My suggestion would be we still  
11:18:39 9 stay with what I requested and give the instructions after  
11:18:39 10 argument. We could let them go to an early lunch and start  
11:18:39 11 after that and then just go through. I don't see -- I mean,  
11:18:39 12 having a break and having lunch and then coming back, why  
11:18:39 13 can't we do it that way, it would put it altogether with  
11:18:39 14 argument and instructions and we'll get done by the end of  
11:18:39 15 the day for sure.

11:18:39 16 THE COURT: How long do you think your closing  
11:18:39 17 is going to be?

11:18:39 18 MR. WISE: At least an hour.

11:18:39 19 MR. LOWELL: About an hour.

11:18:39 20 THE COURT: I mean, what's the harm in me  
11:18:39 21 instructing now, because it seems like it makes a good use  
11:18:39 22 of time.

11:18:39 23 MR. WISE: I'm also -- I don't like arguing  
11:18:39 24 before the instructions because I'm saying the Court will  
11:18:39 25 instruct you and then you tell them they're supposed to

11:18:39 1 consider all the instructions, I think it's better.

11:18:39 2 THE COURT: I understand, but his preference --  
11:18:39 3 your preference I take in into account like I take Mr.  
11:18:39 4 Lowell's preference into account. I'm trying to do this --  
11:18:39 5 I usually do it beforehand, but I was willing to do it the  
11:18:39 6 way you asked except that I think we're wasting some time  
11:18:39 7 here.

11:18:39 8 MR. LOWELL: Well, my view is what I said  
11:18:39 9 before, which is the last thing the jury should hear is what  
11:18:39 10 they're going to do with all they've heard and how they're  
11:18:39 11 going to do it. You instruct now and many hours later  
11:18:39 12 before they would hear your instructions, I would like them  
11:18:39 13 to hear your instructions after we have done what we have  
11:18:39 14 done. Counsel and I have always said Judge Noreika will say  
11:18:39 15 or instruct and that's not a problem, it is still my  
11:18:39 16 preference, I'm sure we can truncate to the lunch and we get  
11:18:39 17 it all done in the afternoon.

11:18:40 18 THE COURT: I am going to instruct on the  
11:18:40 19 substantive stuff now just to be, use this time efficiently.  
11:18:40 20 Can we get the instructions?

11:18:40 21 MR. LOWELL: Do we have the new ones?

11:18:40 22 THE COURT: So I would stop before 22, after  
11:18:40 23 closings we do this, and whatever comes last. Not here, but  
11:18:40 24 we'll do whatever comes next.

11:18:40 25 MR. LOWELL: I'm sorry, Judge, I just didn't



11:18:40 1 follow you.

11:18:40 2 THE COURT: So I go up to 22 and I stop before  
11:18:40 3 22.

11:18:40 4 MR. LOWELL: So it's just two instructions?

11:18:40 5 THE COURT: After the closing, three, because I  
11:18:40 6 say, I did that extra one, don't take anything I say or do.  
11:18:40 7 I was willing to defer but I just want to use time. Okay?

11:18:40 8 (End of side-bar.)

11:18:40 9 THE COURT: All right. So I am going to read  
11:18:40 10 you most of the jury instructions up to you get to the point  
11:18:40 11 that you do your deliberating, we are going to take a short  
11:18:40 12 lunch, have your lunches brought in, and after lunch we'll  
11:18:40 13 go right to the closing arguments, I'll finish up with the  
11:18:40 14 instructions for deliberations, show you the verdict sheet,  
11:18:40 15 and then you can begin your deliberations.

11:18:40 16 Okay. All right.

11:18:40 17 The defendant, Robert Hunter Biden -- you can  
11:18:40 18 read along or listen, or whatever you prefer.

11:18:40 19 The defendant, Robert Hunter Biden, pleaded not  
11:18:40 20 guilty to the offenses charged. He is presumed to be  
11:18:40 21 innocent. He started the trial with a clean slate, with no  
11:18:40 22 evidence against him. The presumption of evidence stays  
11:18:40 23 with the defendant unless and until the government has  
11:18:40 24 presented evidence that overcomes that presumption by  
11:18:40 25 convincing you that the defendant is guilty of offenses

11:18:40 1 charged beyond a reasonable doubt. The presumption of  
11:18:40 2 innocence requires you to find the defendant not guilty,  
11:18:40 3 unless you are satisfied the government has proven guilt  
11:18:40 4 beyond a reasonable doubt.

11:18:40 5 The presumption of innocence means the defendant  
11:18:40 6 has no burden or obligation to present any evidence at all  
11:18:40 7 or to prove that he is not guilty. The burden or obligation  
11:18:40 8 of proof is on the government to prove the defendant is  
11:18:40 9 guilty, and this burden stays with the government throughout  
11:18:40 10 trial.

11:18:40 11 In order for you to find the defendant guilty of  
11:18:40 12 the offenses charged, the government must convince you that  
11:18:40 13 the defendant is guilty beyond a reasonable doubt. That  
11:18:40 14 means the government must prove each and every element of  
11:18:40 15 the offenses charged beyond a reasonable doubt. A defendant  
11:18:40 16 may not be convicted based on suspicion or conjecture, but  
11:18:41 17 only on evidence proving guilty beyond a reasonable doubt.

11:18:41 18 Proof beyond a reasonable doubt does not mean  
11:18:41 19 proof beyond all possible doubts or to a mathematical  
11:18:41 20 certainty. Possible doubts or doubts based on conjecture,  
11:18:41 21 speculation, or hunch are not reasonable doubts. A  
11:18:41 22 reasonable doubt is a fair doubt based on reason, logic,  
11:18:41 23 common sense, or experience. It is a doubt that an ordinary  
11:18:41 24 reasonable person has after carefully weighing all of the  
11:18:41 25 evidence and is a doubt of the sort that would cause him or

11:18:41 1 her to hesitate to act in matters of importance in his or  
11:18:41 2 her own life. It may arise from the evidence, or from the  
11:18:41 3 lack of evidence, or from the nature of the evidence.

11:18:41 4 If, having now heard all the evidence, you are  
11:18:41 5 convinced that the government proved each and every element  
11:18:41 6 of the offense charged beyond a reasonable doubt, you should  
11:18:41 7 return a verdict of guilty for that offense. However, if  
11:18:41 8 you have a reasonable doubt about one or more of the  
11:18:41 9 elements of the offense charged, then you must return a  
11:18:41 10 verdict of not guilty for that offense.

11:18:41 11 You must make your decision in this case based  
11:18:41 12 only on the evidence that you see and hear in this  
11:18:41 13 courtroom. Do not let rumors, suspicions, or anything else  
11:18:41 14 you may see or hear outside the Court influence your  
11:18:41 15 decision in any way.

11:18:41 16 Let me remind you what the evidence from which  
11:18:41 17 you are to find the facts consists of:

11:18:41 18 One. The testimony of the witnesses;

11:18:41 19 Two. Documents and other things received as  
11:18:41 20 exhibits;

11:18:41 21 And three. Anything to which the parties have  
11:18:41 22 stipulated or agreed, which we will address in a moment.

11:18:41 23 What is not evidence?

11:18:41 24 One. Statements and arguments of the lawyers  
11:18:41 25 are not evidence. That includes opening statements and

11:18:41 1 closing arguments.

11:18:41 2 Two. Questions by the lawyers are not evidence.  
11:18:41 3 You should not assume that a fact is true just because one  
11:18:42 4 of the lawyers or I ask a question about it. It's the  
11:18:42 5 witness's answers that are evidence. Of course, you may  
11:18:42 6 need to consider the questions to know what a witness means  
11:18:42 7 by his or her answer. For example, if a witness answers yes  
11:18:42 8 to a question, you will have to consider what the question  
11:18:42 9 was to understand what the witness is saying.

11:18:42 10 Three. Objections by lawyers, including  
11:18:42 11 objections in which the lawyers state facts are not  
11:18:42 12 evidence.

11:18:42 13 Four. Any testimony I struck or told to you  
11:18:42 14 disregard is not evidence, .

11:18:42 15 And five. Anything you may have seen or heard  
11:18:42 16 about this case outside the courtroom is certainly not  
11:18:42 17 evidence.

11:18:42 18 You should use your common sense in weighing the  
11:18:42 19 evidence. Consider it in light of your every day experience  
11:18:42 20 with people and events and give it whatever weight you  
11:18:42 21 believe it deserves. If your experience and common sense  
11:18:42 22 tell you that certain evidence reasonably leads to a  
11:18:42 23 conclusion, you may reach that conclusion.

11:18:42 24 Recall that I told you that the rules of  
11:18:42 25 evidence control what can be received into evidence. When a

11:18:42 1 lawyer asks a question or offers an exhibit into evidence,  
11:18:42 2 and a lawyer on the other side thinks that it is not  
11:18:42 3 permitted by the rules of evidence, that lawyer may object.  
11:18:42 4 An objection simply means that the lawyer is asking me to  
11:18:42 5 decide whether the evidence should be allowed under the  
11:18:42 6 rules.

11:18:42 7 Lawyers have a responsibility to their clients  
11:18:42 8 to make objections when they think evidence is being offered  
11:18:42 9 is improper under the rules of evidence, or improperly under  
11:18:42 10 the rules every evidence. You should not be influenced by  
11:18:42 11 the fact that an objection was made.

11:18:42 12 You should also not be influenced by my rulings  
11:18:42 13 on objections to evidence. If I overruled an objection, the  
11:18:42 14 question was answered or the exhibit was received as  
11:18:42 15 evidence, and you should treat that testimony or exhibit  
11:18:42 16 like any other.

11:18:42 17 If I sustained an objection, the question should  
11:18:42 18 not be answered or the exhibit should not be received in  
11:18:42 19 evidence. Whenever I sustained an objection, you were to  
11:18:42 20 disregard the question or the exhibit entirely. Do not  
11:18:42 21 think about or guess what the witness might have said as an  
11:18:42 22 answer to a question. Do not think about or guess what the  
11:18:42 23 exhibit might have shown. Sometimes a witness might have  
11:18:42 24 already answered before a lawyer objected or before I ruled  
11:18:42 25 on the objection. If I sustained the objection, you should

11:18:42 1 disregard the answer that was given.

11:18:42 2 Also, at certain points throughout the trial, I  
11:18:42 3 may have ordered that some testimony or other evidence be  
11:18:42 4 stricken or removed from the record. I instruct you if I  
11:18:43 5 did that to disregard the testimony or evidence that was  
11:18:43 6 stricken from the record, that means when you are deciding  
11:18:43 7 this case, you must not be consider or be influenced in any  
11:18:43 8 way by the testimony or other evidence that I told you to  
11:18:43 9 disregard.

11:18:43 10 Certain charts and summaries were admitted as  
11:18:43 11 evidence. You may use those charts and summaries as  
11:18:43 12 evidence even though the underlying documents and records  
11:18:43 13 have not been admitted into evidence.

11:18:43 14 The government and the Defendant have stipulated  
11:18:43 15 or agreed that the following facts are true:

11:18:43 16 1. On October 12th, 2018, StarQuest Shooters  
11:18:43 17 and Survival Supply, located in Wilmington, Delaware,  
11:18:43 18 possessed a federal firearms license and was authorized to  
11:18:43 19 deal in firearms under federal laws, therefore StarQuest  
11:18:43 20 Shooters and Survival Supply was a "licensed dealer" as  
11:18:43 21 defined in Title 18, of the United States Code, Section  
11:18:43 22 921(a)(11).

11:18:43 23 2. The Colt Cobra 38SPL revolver with Serial  
11:18:43 24 Number RA551363 is a "firearm" as defined in Title 18,  
11:18:43 25 United States Code, Section 921(a)(3).



11:18:43 1 3. The frame of the Colt Cobra 38 Special  
11:18:43 2 revolver with Serial Number RA551363 was manufactured in the  
11:18:43 3 state of Massachusetts, and Colt's manufacturing company  
11:18:43 4 assembled the frame and remaining components of the Colt  
11:18:43 5 Cobra 38 Special revolver with Serial Number RA551363 at  
11:18:43 6 their facility in the state of Connecticut. By virtue of  
11:18:43 7 its presence in the State of Delaware, the Colt Cobra 38  
11:18:43 8 Special revolver with Serial Number RA551363 traveled in  
11:18:43 9 interstate commerce.

11:18:43 10 You should, therefore, treat these facts as  
11:18:43 11 having been proved, you are not required to do so, however,  
11:18:43 12 because you are the sole judges of the facts.

11:18:44 13 During the trial you heard testimony of  
11:18:44 14 witnesses and argument by counsel that the government did  
11:18:44 15 not use specific investigative techniques such as -- well  
11:18:44 16 this one was not completely addressed, but in any event,  
11:18:44 17 that's for us to fill in, so you can ignore that note. But  
11:18:44 18 to the extent there was testimony that the government  
11:18:44 19 suggested that this government should have used other  
11:18:44 20 specific investigative techniques, that's what this is  
11:18:44 21 about.

11:18:44 22 You may consider these facts in deciding whether  
11:18:44 23 the government has met its burden of proof, because as I  
11:18:44 24 told you, you should look at all the evidence or lack of  
11:18:44 25 evidence in deciding whether the defendant is guilty.



11:18:44 1 However, there is no legal requirement that the government  
11:18:44 2 use any of these specific investigative techniques or all  
11:18:44 3 possible techniques to prove its case. There is no  
11:18:44 4 requirement to -- again, that's our note to us, so you can  
11:18:44 5 ignore that, there is no requirement to use any particular  
11:18:44 6 investigative techniques.

11:18:44 7 Your concern, as I have said, is to determine  
11:18:44 8 whether or not the evidence admitted in this trial proves  
11:18:44 9 the defendant's guilt beyond a reasonable doubt.

11:18:44 10 The rules of evidence ordinarily do not permit  
11:18:44 11 witnesses to state their own opinions about important  
11:18:44 12 questions in a trial, but there are exceptions to these  
11:18:44 13 rules.

11:18:44 14 In this case, you heard testimony from experts.  
11:18:44 15 Because of their knowledge, skill, expert experience,  
11:18:44 16 training, or education in their respective fields, experts  
11:18:44 17 were permitted to offer opinions in that field and the  
11:18:44 18 reasons for those opinions.

11:18:44 19 The opinion of these witnesses -- the opinion  
11:18:44 20 these witnesses state should receive whatever weight you  
11:18:44 21 think appropriate, given all the other evidence in the case.  
11:18:44 22 In weighing this opinion testimony you may consider the  
11:18:44 23 witness's qualifications, the reasons for the witness's  
11:18:44 24 opinions, and the reliability of the information supporting  
11:18:44 25 the opinions, as well as the other factors discussed in

11:18:45 1 these instructions for weighing the testimony of witnesses.  
11:18:45 2 You may disregard the opinions entirely if you decide their  
11:18:45 3 opinions are not based on sufficient knowledge, skill,  
11:18:45 4 experience, training, or education. You may also disregard  
11:18:45 5 the opinions if you conclude that the reasons given in  
11:18:45 6 support of the opinions are not sound, or if you conclude  
11:18:45 7 that the opinions are not supported by the facts shown by  
11:18:45 8 the evidence, or if you think that the opinions are out  
11:18:45 9 weighed by other evidence.

11:18:45 10 You have heard evidence that Hallie Biden and  
11:18:45 11 Zoe Kestan have received a promise from the government that  
11:18:45 12 their testimony will not be used against them in a criminal  
11:18:45 13 case.

11:18:45 14 Their testimony was received into evidence and  
11:18:45 15 may be considered by you. The government is permitted to  
11:18:45 16 present testimony of someone who has received immunity in  
11:18:45 17 exchange for their testimony, but you should consider the  
11:18:45 18 testimony with great care and caution. In evaluating that  
11:18:45 19 testimony, you should consider this factor along with the  
11:18:45 20 others I have called to your attention. Whether or not  
11:18:45 21 their testimony may have been influenced by the government's  
11:18:45 22 promise is for to you determine. You may give their  
11:18:45 23 testimony such weight as you think it deserves.

11:18:45 24 The defendant did not testify in this case. A  
11:18:45 25 defendant has an absolute constitutional right not to

11:18:45 1 testify. The burden of proof remains with the prosecution  
11:18:45 2 throughout the entire trial and never shifts to the  
11:18:45 3 defendant. The defendant is never required to prove that  
11:18:45 4 he's innocent. You must not attach any significance to the  
11:18:45 5 fact that the defendant did not testify. You must not draw  
11:18:45 6 any adverse inference against him because he did not take  
11:18:45 7 the witness stand. Do not consider, for any reason at all,  
11:18:45 8 the fact that the defendant did not testify. Do not discuss  
11:18:45 9 that fact during your deliberations or let it influence your  
11:18:45 10 decision in any way.

11:18:45 11 Count One charges that the defendant knowingly  
11:18:45 12 made a false statement in the purchase of a firearm, in  
11:18:45 13 violation of Title 18, of the United States Code,  
11:18:45 14 Section 922(a)(6).

11:18:45 15 To find the defendant guilty of this offense,  
11:18:45 16 you must find that the government proved each of the  
11:18:45 17 following four elements beyond a reasonable doubt:

11:18:45 18 First. The seller was a licensed dealer;

11:18:45 19 Second. That the defendant made a false  
11:18:45 20 statement while acquiring a firearm from the seller;

11:18:45 21 Third. That the defendant knew the statement  
11:18:45 22 was false;

11:18:45 23 And fourth, that the false statement was  
11:18:45 24 intended or likely to deceive the seller with respect to any  
11:18:46 25 fact material to the lawfulness of the sale of the firearm.

11:18:46 1 A statement is false if it was untrue when made.

11:18:46 2 The term "firearm" means any weapon which will  
11:18:46 3 expel, or is designed to or may readily be converted to  
11:18:46 4 expel, a projectile by the action of an explosive.

11:18:46 5 A "dealer" -- a dealer for this in terms of  
11:18:46 6 firearms dealers, a dealer is any person engaged in the  
11:18:46 7 business of selling firearms at wholesale or retail.

11:18:46 8 The term "licensed dealer" means any dealer who  
11:18:46 9 is licensed under the provisions of the Gun Control Act of  
11:18:46 10 1968.

11:18:46 11 As I mentioned before when I talked about the  
11:18:46 12 stipulations, the parties have stipulated and agreed that  
11:18:46 13 StarQuest Shooters and survival supply was a "licensed  
11:18:46 14 dealer". You should therefore treat this fact as having  
11:18:46 15 been proved, though you are not required to do so because  
11:18:46 16 you are the sole judges of the facts.

11:18:46 17 A material fact is one which would reasonably be  
11:18:46 18 expected to be of concern to a reasonable and prudent person  
11:18:46 19 in connection with the sale of the firearm. In determining  
11:18:46 20 whether a fact was material to the lawfulness of the sale of  
11:18:46 21 the firearm, you may consider that the law prohibits any  
11:18:46 22 person who is an unlawful user or addicted to any controlled  
11:18:46 23 substance from purchasing or possessing any firearm.

11:18:46 24 Count Two charges that the defendant made a  
11:18:46 25 false statement related to information required to be kept

11:18:46 1 by law by a federal firearms licensed dealer, in violation  
11:18:46 2 of 18 -- Title 18, of the United States Code  
11:18:46 3 Section 924(a) (1) (A) .

11:18:46 4 To find the defendant guilty of this offense,  
11:18:46 5 you must find that the government proved each of the  
11:18:46 6 following four elements beyond a reasonable doubt:

11:18:46 7 First. The defendant knowingly made a statement  
11:18:46 8 or representation in an ATF Form 4473;

11:18:46 9 Second. The defendant made the statement or  
11:18:46 10 representation to a federally licensed firearms dealer;

11:18:46 11 Third. The statement or representation was  
11:18:46 12 false; and

11:18:46 13 Fourth. The defendant knew the statement or  
11:18:46 14 representation was untrue when he made the statement or  
11:18:47 15 representation.

11:18:47 16 As I told you for Count One, a statement is  
11:18:47 17 "false" if it was untrue when it was made.

11:18:47 18 Knowingly. A person acts knowingly if that  
11:18:47 19 person acts voluntarily and intentionally and not because of  
11:18:47 20 a mistake or accident or any innocent reason. This means  
11:18:47 21 that the government must prove beyond a reasonable doubt  
11:18:47 22 that the defendant was conscious and aware of the nature of  
11:18:47 23 his actions and of the surrounding facts and circumstances,  
11:18:47 24 as specified in the definition of the offenses charged.

11:18:47 25 In deciding whether the defendant acted

11:18:47 1 "knowingly", you may consider evidence about what the  
11:18:47 2 defendant said, what the defendant did, and failed to do,  
11:18:47 3 how the defendant acted, and all the other facts and  
11:18:47 4 circumstances shown by the evidence that may prove what was  
11:18:47 5 in the defendant's mind at the time.

11:18:47 6 Count Three. Count Three charges the defendant,  
11:18:47 7 knowing that he was an unlawful user of a controlled  
11:18:47 8 substance, or addicted to a controlled substance, did  
11:18:47 9 knowingly possess a firearm in violation of Title 18, United  
11:18:47 10 States Code, Section 922(g) (3).

11:18:47 11 To find the defendant guilty of this offense,  
11:18:47 12 you must find that the government proved each of the  
11:18:47 13 following four elements beyond a reasonable doubt".

11:18:47 14 First. The defendant was an unlawful user of a  
11:18:47 15 controlled substance or addicted to a controlled substance;

11:18:47 16 Second, the defendant knowingly possessed a  
11:18:47 17 firearm, that is a Colt Cobra 38 SPL revolver with Serial  
11:18:47 18 Number RA551363, while he was an unlawful user of a  
11:18:48 19 controlled substance or addicted to a controlled substance;

11:18:48 20 Third. At the time the defendant knowingly  
11:18:48 21 possessed the firearm, he knew he was an unlawful user of a  
11:18:48 22 controlled substance or addicted to a controlled substance.

11:18:48 23 And fourth. The firearm was transported across  
11:18:48 24 a state line at some time during or before the defendant's  
11:18:48 25 possession of it.



11:18:48 1 The term "firearm" has the same definition as  
11:18:48 2 previously provided that these instructions.

11:18:48 3 You are instructed that crack cocaine, commonly  
11:18:48 4 referred to as crack, is a controlled substance.

11:18:48 5 You are also instructed that as to the fourth  
11:18:48 6 element, that the "firearm was transported across a state  
11:18:48 7 line at some time during or before the defendant's  
11:18:48 8 possession of it." The parties have agreed that the Colt  
11:18:48 9 Cobra 38 SPL revolver with Serial RA551363 traveled in  
11:18:48 10 interstate commerce, and that this element is met. You  
11:18:48 11 should therefore treat this fact as having been proved, but  
11:18:48 12 you are not required to do so, because you are the sole  
11:18:48 13 judge of the facts.

11:18:48 14 The phrase "unlawful user of a controlled  
11:18:48 15 substance" means a person who uses a controlled substance in  
11:18:48 16 a manner other than as prescribed by a licensed physician.  
11:18:48 17 The defendant must have been actively engaged in use of a  
11:18:48 18 controlled substance or controlled substances during the  
11:18:48 19 time he possessed the firearm, but the law does not require  
11:18:50 20 that he used the controlled substances or -- controlled  
11:18:54 21 substance or controlled substances at the precise time he  
11:18:58 22 possessed the firearm. Such use is not limited to the use  
11:19:01 23 of drugs on a particular day, or within a matter of days or  
11:19:05 24 weeks before, but rather that the unlawful use has occurred  
11:19:08 25 recently enough to indicate that the individual is actively



11:19:12 1 engaged in such conduct.

11:19:14 2 An inference that a person was a user of a  
11:19:18 3 controlled substance may be drawn from evidence of a pattern  
11:19:21 4 of use or possession of a controlled substance that  
11:19:25 5 reasonably covers the time that the firearm was possessed.

11:19:27 6 The term "addict" means any individual who  
11:19:32 7 habitually uses any controlled substance so as to endanger  
11:19:33 8 the public morals, health, safety, or welfare, or who is so  
11:19:36 9 far addicted to the use of the controlled substance as to  
11:19:39 10 have lost the power of self control with reference to his  
11:19:43 11 addiction.

11:19:44 12 Knowing possession. To establish the second  
11:19:49 13 element of Count Three, the government must prove that the  
11:19:52 14 defendant possessed the firearm in question. To "possess"  
11:19:54 15 means to have something within a person's control. The  
11:19:57 16 government does not have to prove that the defendant  
11:19:59 17 physically held the firearm, that is, he had actual  
11:20:03 18 possession of it. As long as the firearm was within the  
11:20:06 19 defendant's control, he possessed it. If you find that the  
11:20:10 20 defendant either had actual possession of the firearm or had  
11:20:14 21 power and intention to exercise control over it, even though  
11:20:18 22 it was not in the defendant's physical possession, that is,  
11:20:20 23 that the defendant had the ability to take actual possession  
11:20:24 24 of the object when the defendant wanted to do so, you may  
11:20:28 25 find that the government has proven possession.

11:20:30 1 Possession may be momentary or fleeting.

11:20:33 2 The law also recognizes that possession may be  
11:20:36 3 sole or joint. If one person alone possesses the firearm,  
11:20:40 4 that is sole possession. However, more than one person may  
11:20:44 5 have the power and intention to exercise control over a  
11:20:44 6 firearm. This is called joint possession.

11:20:46 7 If you find that the defendant had power and  
11:20:50 8 intention, then he possessed the firearm even if he  
11:20:53 9 possessed it jointly with another.

11:20:55 10 Proof of ownership of the firearm is not  
11:20:58 11 required.

11:20:59 12 The government must prove that the defendant  
11:21:01 13 knowingly possessed the firearm described in the indictment.  
11:21:05 14 This means that the defendant possessed the firearm  
11:21:07 15 purposely and voluntarily, and not by accident or mistake.  
11:21:10 16 It also means that defendant knew the object was a firearm.

11:21:13 17 The indictment charges the defendant with being  
11:21:19 18 an unlawful user of a controlled substance or addicted to a  
11:21:24 19 controlled substance. The government is not required to  
11:21:27 20 prove both, that he was an unlawful user of a controlled  
11:21:30 21 substance, and also addicted to a controlled substance. It  
11:21:34 22 is sufficient for the government to prove, beyond a  
11:21:36 23 reasonable doubt, that he was either an unlawful user of a  
11:21:41 24 controlled substance or addicted to a controlled substance.

11:21:44 25 Each of you have must agree with the other

11:21:47 1 jurors as to whether the defendant was an unlawful user of a  
11:21:51 2 controlled substance, or was addicted to controlled  
11:21:54 3 substances, or both. If you unanimously agree that he was  
11:21:59 4 either an unlawful user of a controlled substance, or was  
11:22:02 5 addicted to a controlled substance, or was both, and met the  
11:22:07 6 other elements as to the offense, you may find the defendant  
11:22:10 7 guilty of that offense.

11:22:13 8 Unless each of you agree that the government has  
11:22:17 9 proven that he was either an unlawful user of a controlled  
11:22:20 10 substance or he was addicted to a controlled substance, then  
11:22:24 11 you must find the defendant not guilty.

11:22:26 12 The fourth element listed in Instruction number  
11:22:33 13 18, let's just make sure that's right. It isn't. It is, if  
11:22:53 14 you can correct that, it should be, the fourth element  
11:22:57 15 listed in instruction number 15. The fourth element listed  
11:23:04 16 in instruction number 15 that the government must prove  
11:23:08 17 beyond a reasonable doubt is that the firearm specified in  
11:23:19 18 the indictment had at some time traveled in interstate  
11:23:23 19 commerce.

11:23:24 20 I already told you this before, but in this  
11:23:26 21 case, the parties have agreed that the Colt Cobra 38SPL  
11:23:29 22 revolver with Serial Number RA551363 traveled in interstate  
11:23:34 23 commerce. You should therefore treat this fact as having  
11:23:37 24 been proven. Though you are not required to do so given  
11:23:42 25 your role as the sole judge of facts.

11:23:46 1 Remember that you are here only to determine  
11:23:48 2 whether the defendant is guilty or not guilty of the charges  
11:23:51 3 in the indictment. The defendant is not on trial for any  
11:23:54 4 conduct or offense not charged in the indictment.

11:23:57 5 So that is the end of the substantive  
11:24:01 6 instructions. And after closing arguments, I'll give you  
11:24:05 7 the other instructions on the foreperson and your  
11:24:08 8 deliberations.

11:24:09 9 But for now, what we are going to do is take a  
11:24:13 10 break. It's 11:24. Let's come back at about 12:05, and  
11:24:18 11 we'll start with the closing arguments.

11:24:21 12 COURTROOM DEPUTY: All rise.

11:24:23 13 (Jury exiting the courtroom at 11:24 a.m.)

11:24:52 14 THE COURT: All right. Anything we need to  
11:24:56 15 address?

11:24:56 16 MR. HINES: No, Your Honor.

11:24:57 17 MR. LOWELL: No.

11:25:11 18 (A luncheon recess was taken.)

12:12:32 19 COURTROOM DEPUTY: All rise.

12:12:42 20 (Jury entering the courtroom at 12:12 p.m.)

12:12:55 21 THE COURT: All right, everyone. Welcome back.  
12:13:08 22 Everyone else can please be seated.

12:13:10 23 Mr. Wise.

12:13:15 24 MR. WISE: All of this is not evidence. The  
12:13:44 25 people sitting in the gallery are not evidence. You may

12:13:48 1 recognize some of them from the news or from the community.  
12:13:54 2 In the course of this trial, you may have looked at them and  
12:13:58 3 they may have looked at you. You may have seen them  
12:14:02 4 reacting to the testimony or the photographs, or something  
12:14:06 5 that one of the lawyers said. But respectfully, none of  
12:14:12 6 that matters. The only evidence in this case is what came  
12:14:19 7 from the witness stand and the physical and documentary  
12:14:24 8 evidence that has been admitted by Judge Noreika.

12:14:29 9 And your decision can only be made based on  
12:14:33 10 evidence and the law.

12:14:36 11 As Mr. Hines said in opening, no one is above  
12:14:41 12 the law. And this case stands for that simple proposition.  
12:14:48 13 Your responsibility to apply the law to the facts is the  
12:14:52 14 same task that every jury faces in every courtroom in every  
12:14:58 15 court house in America. It is no more important or less  
12:15:04 16 important because of who the defendant is.

12:15:09 17 This afternoon, I will summarize the evidence  
12:15:12 18 that has been presented to you in the course of this trial  
12:15:15 19 and discuss how it establishes beyond a reasonable doubt  
12:15:20 20 each of the elements of the three charges in this case.

12:15:28 21 These are the charges. The first two are false  
12:15:36 22 statement charges. The third is a possession charge. Judge  
12:15:40 23 Noreika has already instructed you on the law you are to  
12:15:42 24 apply as to each of these charges. I will be discussing how  
12:15:46 25 the facts establishes those elements. But obviously, what

12:15:52 1 Judge Noreika says is what matters.

12:15:55 2 So if I say anything that is in contradiction to  
12:15:59 3 or contrast to what the Court has instructed you, you are to  
12:16:03 4 follow the law as Her Honor gave it.

12:16:06 5 Now, there is overlap between the elements of  
12:16:09 6 these offenses, although there are differences between each  
12:16:14 7 count that I'll highlight. And as Her Honor instructed you,  
12:16:20 8 the United States must prove each element of each offense  
12:16:23 9 beyond a reasonable doubt. That is a burden we embrace and  
12:16:27 10 a burden I submit we have met.

12:16:30 11 The parties have stipulated to a limited number  
12:16:33 12 of facts which prove some but not all the elements of the  
12:16:37 13 offenses beyond a reasonable doubt. And I submit that for  
12:16:40 14 some of the other elements, even though the parties haven't  
12:16:43 15 stipulated, the evidence is undisputed and proves those  
12:16:47 16 statements beyond a reasonable doubt.

12:16:49 17 The central issue in this case is whether the  
12:16:53 18 defendant was an unlawful user of, or addicted to a  
12:16:57 19 controlled substance. And whether he knew that fact. And  
12:17:01 20 as Her Honor instructed you, the United States doesn't have  
12:17:05 21 to prove both. But I believe the evidence does.

12:17:10 22 Most of the time we have spent in this trial has  
12:17:12 23 been introducing evidence of the defendant's drug use,  
12:17:17 24 addiction, and his knowledge of it. In opening, Mr. Lowell  
12:17:20 25 said the prosecutors plan to call witness after witness who



12:17:24 1 will tell you, and they plan to show you dozens of e-mails  
12:17:27 2 or texts which reference what Hunter does not dispute. He  
12:17:32 3 had abused alcohol since he was a teenager, and drugs as an  
12:17:36 4 adult. The defendant does dispute it. He pleaded not  
12:17:40 5 guilty to the charges, which is his right. And what  
12:17:44 6 Mr. Lowell says isn't evidence. The fact that he said the  
12:17:48 7 defendant doesn't dispute his drug use isn't a stipulation  
12:17:52 8 to it. You heard Mr. Hines read the stipulations. They're  
12:17:59 9 Exhibit 43. None of them are that the defendant admits he  
12:18:03 10 used drugs as an adult. So the United States had to prove  
12:18:06 11 it. And that's why we had to call witnesses, and show you  
12:18:09 12 photographs and text messages, and play parts of the  
12:18:13 13 nonfiction book that the defendant wrote and read. All of  
12:18:20 14 which establishes, beyond a reasonable doubt, that the  
12:18:23 15 defendant used crack and was addicted to crack, and that he  
12:18:26 16 knew he used crack and was addicted to it during the  
12:18:29 17 relevant time period.

12:18:31 18 To be clear the evidence was personal, it was  
12:18:34 19 ugly, and it was overwhelming. It was also absolutely  
12:18:40 20 necessary. There is no other way to prove the use of drugs  
12:18:44 21 or addiction to drugs than through the kind of evidence that  
12:18:49 22 you saw. And so this afternoon, I will spend most of my  
12:18:53 23 time talking about the evidence that the defendant was a  
12:18:55 24 user of or addicted to crack and that he knew it, and that  
12:19:00 25 evidence applies to all three of these charges. And I'll



12:19:04 1 address that evidence once I have spoken to some of the  
12:19:08 2 other elements that are not related to those facts.

12:19:15 3 To begin with, Her Honor instructed you on the  
12:19:19 4 elements of Count 1, false statement in purchase of a  
12:19:21 5 firearm. These are the elements, and I will go through each  
12:19:25 6 of them in turn.

12:19:27 7 The first element is that the seller was a  
12:19:29 8 licensed dealer. There is a stipulation that StarQuest was  
12:19:33 9 a licensed dealer. So the first element is proved beyond a  
12:19:37 10 reasonable doubt.

12:19:38 11 The second element of Count 1 is that the  
12:19:41 12 defendant made a false statement while acquiring a firearm  
12:19:45 13 from a seller. There is a stipulation that the Colt Cobra  
12:19:50 14 38 SPL revolver that he purchased was a firearm, so that is  
12:19:57 15 proved beyond a reasonable doubt.

12:19:59 16 This is the defendant's false statement. The no  
12:20:07 17 answer to question 11E on the ATF Form 4473, which the  
12:20:13 18 defendant made on October 12th, 2018 is the false statement  
12:20:17 19 the defendant is charged with making.

12:20:21 20 I want to be very clear about that. This is the  
12:20:23 21 statement that the evidence proves is false.

12:20:27 22 The defense called Jason Turner and Ronald  
12:20:30 23 Palimere, two StarQuest Shooters employees who had nothing  
12:20:34 24 to do with whether the defendant answered question 11E  
12:20:38 25 falsely.

12:20:40 1           The defense elicited testimony about the form of  
12:20:43 2           identification the defendant used, but that's irrelevant to  
12:20:46 3           the charges in this case. The undisputed evidence is that  
12:20:51 4           the defendant bought the gun regardless of what ID he gave  
12:20:56 5           or didn't give. Again, to be clear, he is not charged with  
12:21:01 6           giving a false address or trying to use a phony ID.

12:21:05 7           So to the extent Gordon Cleveland, the man who  
12:21:10 8           sold him the gun, who was the only relevant witness from  
12:21:14 9           StarQuest on the question of how the defendant answered  
12:21:17 10          question 11E, and Jason Turner, the employee who ran the  
12:21:21 11          background check, who was not present when the defendant  
12:21:24 12          filled out Section A of the form, have different  
12:21:27 13          recollections of who asked for secondary ID or whether a  
12:21:30 14          secondary ID was provided is irrelevant.

12:21:35 15          Now, the evidence shows that this statement was  
12:21:38 16          false because while the defendant checked no, that he wasn't  
12:21:42 17          a user or addicted to a controlled substance, in fact he  
12:21:48 18          was. And I will discuss that in some detail.

12:21:52 19          The third element is that the defendant knew  
12:21:54 20          that that statement was false. In other words, he knew he  
12:21:57 21          was a user of or addicted to crack cocaine when he filled  
12:22:01 22          out that form. And again, I will address that evidence in  
12:22:06 23          response -- in referring to all three of the counts where  
12:22:09 24          that is the central issue.

12:22:11 25          And then the fourth element of Count 1 is that

12:22:14 1 the false statement was intended or likely to deceive the  
12:22:17 2 seller with respect to any fact material to the lawfulness  
12:22:22 3 of the sale of the firearm, and her Honor has instructed you  
12:22:28 4 on what material means. And material means a fact which  
12:22:32 5 would reasonably be expected to be of concern to a  
12:22:36 6 reasonable and prudent person in connection with the sale of  
12:22:39 7 the firearm. Whether the individual employees at StarQuest  
12:22:46 8 thought the statement was material is not the question. And  
12:22:49 9 the Court instructed you in determining whether a fact was  
12:22:53 10 material to the lawfulness of the sale of the firearm, you  
12:22:56 11 may consider that the law prohibits any person who was an  
12:23:00 12 unlawful user or addicted to any control substance from  
12:23:03 13 purchasing or possessing the firearm. The form itself, the  
12:23:07 14 highlighted portion on the screen establishes that an answer  
12:23:11 15 to question 11E is material, because if you answer yes, you  
12:23:15 16 are prohibited from buying a firearm. In other words, the  
12:23:19 17 answer matters, it is material.

12:23:22 18 Count 2 is another related false statement  
12:23:26 19 offense, what was referred to as a record keeping offense,  
12:23:30 20 an offense about the record that is kept by an FFL that  
12:23:36 21 contained the false statement. And these are the elements.

12:23:40 22 Again, Count 1 and 2 charge that the defendant  
12:23:44 23 made a false statement. And the difference is that Count 1  
12:23:48 24 requires that the statement be material, but it doesn't have  
12:23:52 25 to be made on any particular government form. Count 2

12:23:56 1 doesn't require the United States to prove that the  
12:23:59 2 statement was material, but it does require that the  
12:24:03 3 statement be on a particular form, specifically an ATF  
12:24:10 4 Form 4473. The first element of Count 2 is that the  
12:24:13 5 defendant knowingly made a statement or representation in an  
12:24:18 6 ATF Form 4473. And Exhibit 10(a) is the ATF Form 4473 that  
12:24:25 7 the defendant filled out.

12:24:27 8           The undisputed evidence is that he did fill  
12:24:32 9 question 11E, Gordon Cleveland testified to that, and there  
12:24:37 10 is nothing to the contrary. I will return to the evidence  
12:24:41 11 that the statement was false, and he knew it was false after  
12:24:43 12 I discuss the other element of Count 2 and Count 3. Second,  
12:24:48 13 the defendant made the statement or representation to a  
12:24:51 14 federally licensed firearms dealer. Again the parties have  
12:24:55 15 stipulated that StarQuest was a licensed dealer, so Count 2,  
12:25:01 16 element 2 of Count 2, like element 1 of Count 1, is proof  
12:25:06 17 beyond a reasonable doubt.

12:25:07 18           Third, the statement or representation was  
12:25:12 19 false, and fourth, the defendant knew the statement or  
12:25:14 20 representation was untrue when he made the statement or  
12:25:16 21 representation, and a statement is false if it was untrue  
12:25:22 22 when it was made. I will establish the evidence of that at  
12:25:27 23 the conclusion of reviewing the elements of all three  
12:25:30 24 offenses. Count 3 charges the defendant of violating the  
12:25:35 25 law that makes it a crime for a drug user or a drug addicted

12:25:39 1 to possess a firearm. These are the elements. Count 3 is a  
12:25:43 2 possession offense, it's different from Count 1 and 2  
12:25:48 3 because it makes it unlawful to possess a firearm if you are  
12:25:51 4 a user or addicted to do a controlled substance. It doesn't  
12:25:55 5 require the government to prove the defendant made a false  
12:25:58 6 statement. It doesn't have anything to do with a federally  
12:26:02 7 licensed firearm dealer or the purchase of a gun. In fact,  
12:26:05 8 a defendant who stole a gun or acquired it illegally could  
12:26:09 9 be guilty of this crime. In other words, unlike Count 1 and  
12:26:14 10 2, which is all about how a defendant tries to acquire a gun  
12:26:18 11 by making false statements, how a defendant acquires a gun  
12:26:23 12 is irrelevant to Count 3. But Count 3 does require that the  
12:26:29 13 government prove that the defendant possessed a firearm.  
12:26:31 14 The important overlap between all three charges is that the  
12:26:35 15 United States must prove the defendant was an unlawful user  
12:26:38 16 of or addicted to a controlled substance and that he knew  
12:26:41 17 it. The first element of Count 3 was that the defendant was  
12:26:44 18 an unlawful user of a controlled substance or addicted to  
12:26:47 19 it. Second, that the defendant knowingly possessed a  
12:26:50 20 firearm, that is a Colt Cobra 38 SPL revolver with that  
12:26:55 21 serial number, while he was an unlawful user of a controlled  
12:26:59 22 substance or addicted to a controlled substance. The  
12:27:06 23 evidence establishes beyond a reasonable doubt that the  
12:27:09 24 defendant possessed this gun. You heard the testimony of  
12:27:11 25 Gordon Cleveland that he sold the defendant the firearm.

12:27:15 1 You saw the receipt from StarQuest that shows the firearm  
12:27:19 2 serial number. You heard testimony from Hallie Biden that  
12:27:22 3 she found the firearm in the center console of the  
12:27:26 4 defendant's truck on October 23rd, 2018. You saw messages  
12:27:30 5 to Hallie Biden from the defendant where he admits the gun  
12:27:30 6 was his. The serial number of the recovered gun we have in  
12:27:35 7 testimony matches the serial number on the StarQuest  
12:27:37 8 receipt. And the defendant made a statement to the police  
12:27:41 9 that the gun was his. In fact, there was no evidence that  
12:27:45 10 anyone else possessed the gun from October 12th to  
12:27:50 11 October 23rd, other than the defendant.

12:27:51 12 Count 3 of -- element 3 of Count 3 is that at  
12:27:57 13 the time the defendant knowingly possessed the firearm, he  
12:28:00 14 knew he was an unlawful user of a controlled substance or  
12:28:04 15 addicted to a controlled substance.

12:28:06 16 And I'll return to that as I said. In Count 4,  
12:28:10 17 the firearm was transported across the state line at some  
12:28:14 18 time during or before the defendant's possession of it. And  
12:28:19 19 here there is a stipulation that the firearm traveled in  
12:28:23 20 interstate commerce, so the fourth element of Count 3 is  
12:28:26 21 proven beyond a reasonable doubt.

12:28:28 22 And so now I turn to, as I said is the central  
12:28:34 23 issue in this case, and that is the evidence has established  
12:28:37 24 beyond a reasonable doubt that the defendant was an unlawful  
12:28:41 25 user of and addicted to a controlled substance when he



12:28:45 1 bought the gun on October 12th, 2018, during the period when  
12:28:49 2 he possessed it from October 12th to October 23rd, and for  
12:28:54 3 more than six months after. Judge Noreika has given you a  
12:28:58 4 series of legal instructions that relate to this evidence.  
12:29:02 5 The first was a definition of "knowing". And in opening,  
12:29:06 6 Mr. Lowell said that knowingly is a very high state of mind.  
12:29:13 7 Well the instruction says what it says about knowingly. It  
12:29:17 8 means in sum that the defendant knew what he was doing. It  
12:29:21 9 means he didn't use drugs by accident. That he didn't smoke  
12:29:25 10 a cigarette laced with cocaine that someone gave him without  
12:29:29 11 his knowledge.

12:29:30 12 He knew he was using drugs. That's what the  
12:29:32 13 evidence shows. And he knew he was addicted to drugs,  
12:29:35 14 that's what the evidence shows.

12:29:38 15 Maybe if he had never been to rehab, he could  
12:29:41 16 argue that he didn't know he was an addict when he bought  
12:29:44 17 the gun on October the 12th, but he had been to rehab over  
12:29:48 18 and over again, and he kept going to rehab, which evidences  
12:29:52 19 that he knew he was -- he had an addiction when he bought  
12:29:57 20 and possessed the gun.

12:29:58 21 Maybe if he hadn't used crack for a long period  
12:30:02 22 of time before he bought the gun he could claim he didn't  
12:30:05 23 know he was an addict. But the evidence is he was using in  
12:30:10 24 Malibu at the end of September, just two weeks before. And  
12:30:14 25 as the instruction provides, the evidence that a defendant



12:30:18 1 acted knowingly includes what a defendant said, what a  
12:30:22 2 defendant did and failed to do, how the defendant acted, and  
12:30:26 3 all other facts and circumstances shown by the evidence that  
12:30:29 4 may prove what was in the defendant's mind at the time. And  
12:30:34 5 we have presented evidence in all of those categories.  
12:30:37 6 We've presented evidence of what the defendant said at the  
12:30:41 7 time in his messages, and shortly thereafter in his memoir,  
12:30:45 8 what he did setting up drug purchases, talking about drug  
12:30:49 9 use, talking about addiction with others, how he acted. You  
12:30:53 10 heard testimony from witnesses about how he could present  
12:30:56 11 himself even when he was using drugs in a coherent way, and  
12:31:04 12 other facts and circumstances that I will summarize for you.

12:31:07 13 Now Judge Noreika also instructed you on what is  
12:31:11 14 meant by an unlawful user of a controlled substance. And  
12:31:17 15 the instruction she read, what the law says, is that the  
12:31:24 16 phrase "unlawful user of a controlled substance means a  
12:31:27 17 person who uses a controlled substance in a manner other  
12:31:30 18 than as prescribed by a licensed physician." Of course  
12:31:33 19 there is no evidence that the defendant was using anything  
12:31:35 20 prescribed by a physician.

12:31:36 21 The defendant must have been actively engaged in  
12:31:39 22 the use of a controlled substance or controlled substances  
12:31:43 23 during the time he possessed the firearm. But the law does  
12:31:46 24 not require that he used the controlled substance or  
12:31:49 25 controlled substances at the precise time he possessed the

12:31:54 1 firearm. I want to be very clear about that. The United  
12:32:02 2 States is not required to prove that the defendant used  
12:32:05 3 drugs on October 12th when he bought the gun, Mr. Hines told  
12:32:10 4 you that in opening, that's what the law is. Or at any time  
12:32:16 5 between October 12th and October 23rd when he possessed it.  
12:32:21 6 I'll repeat that as well.

12:32:23 7 The United States is not required to prove that  
12:32:25 8 he used drugs from October 12th to October 23rd. And to  
12:32:31 9 the extent Mr. Lowell said anything in his opening or will  
12:32:35 10 say anything in closing or has given you the impression with  
12:32:38 11 his questions that the government has to prove that the  
12:32:41 12 defendant used drugs on October 12th or between October 12th  
12:32:45 13 and 23rd, you should put that aside and follow Judge  
12:32:49 14 Noreika's instructions.

12:32:51 15 And as the instruction continues, such use is  
12:32:55 16 not limited to the use of drugs on a particular day, or  
12:32:58 17 within a matter of days or weeks before, but rather that the  
12:33:02 18 unlawful use has occurred recently enough to indicate that  
12:33:05 19 the individual is actively engaged in such conduct.

12:33:11 20 So again, the United States is not required to  
12:33:17 21 prove drug use on a particular day, whether it's  
12:33:21 22 October 12th, or any day between October 12th and  
12:33:24 23 October 23rd, or within a matter of days or weeks before  
12:33:29 24 that period. In other words, there is no requirement that  
12:33:32 25 the United States prove use in the month of October.

12:33:37 1 Nothing in the instructions tell you you are required to  
12:33:41 2 find that he used in October.

12:33:44 3 Rather, the instructions say the -- rather that  
12:33:50 4 the unlawful use has occurred recently enough to indicate  
12:33:53 5 that the individual is actively engaged in such conduct.

12:33:57 6 And so the testimony from Zoe Kestan is the  
12:34:01 7 defendant used in Malibu on September 23rd. That was a  
12:34:06 8 little less than two weeks before the defendant bought his  
12:34:10 9 gun. That is unlawful use that occurred recently enough to  
12:34:26 10 indicate that the defendant is actively engaged in the use  
12:34:30 11 of drugs when he bought and then possessed the gun. You  
12:34:33 12 could convict on those facts alone.

12:34:37 13 Now, obviously there is evidence that he was  
12:34:40 14 using in the month of October, which I will discuss in  
12:34:43 15 detail after I summarize all the evidence that the defendant  
12:34:46 16 was a user of or an addict, and that he knew it. But to be  
12:34:51 17 clear, the evidence is not limited to October. And that is  
12:34:56 18 because as the instruction provides, an inference that a  
12:34:59 19 person was a user of a controlled substance may be drawn  
12:35:02 20 from evidence of a pattern of use or possession of a  
12:35:08 21 controlled substance that reasonably covers the time the  
12:35:11 22 firearm was possessed.

12:35:12 23 That's why we introduced evidence from 2015 to  
12:35:17 24 2019. In other words, before, during, and after the time  
12:35:22 25 when the defendant bought the gun and when he possessed it,

12:35:27 1 because that establishes the pattern of use or possession of  
12:35:35 2 a controlled substance that reasonably covers the time that  
12:35:38 3 the firearm was possessed. Of course on October 12th, the  
12:35:41 4 day he bought the gun is when the -- is the beginning of  
12:35:44 5 when the firearm was possessed, so you can consider the  
12:35:47 6 evidence of the defendant's pattern of use of a controlled  
12:35:52 7 substance to conclude that he was using at the time he  
12:35:55 8 bought the gun, as well, and that he knew it. Judge Noreika  
12:36:01 9 also instructed you on the definition of an addict, and  
12:36:05 10 again the government doesn't have to prove, and you need not  
12:36:08 11 find to convict, that the defendant was both a user of and  
12:36:11 12 an addict, but I would submit the evidence supports both.  
12:36:15 13 And the definition of addict is any individual who  
12:36:20 14 habitually uses any controlled substance so as to endanger  
12:36:23 15 the public morals, health, safety, or welfare, or who is so  
12:36:28 16 far addicted to the use of a controlled substance as to have  
12:36:32 17 lost the power of self control with reference to his  
12:36:34 18 addiction. And again, the evidence and the reason it was  
12:36:38 19 introduced from 2015 to '19 shows the defendant habitually  
12:36:42 20 used a controlled substance. It isn't something that  
12:36:46 21 started the day before he bought and then possessed the gun,  
12:36:50 22 or the week before, or the month before, it started years  
12:36:53 23 before and it continued for months thereafter. All of that  
12:36:57 24 is part of the pattern of use.

12:37:00 25 And he had lost the power of self control with

12:37:03 1 reference to the addiction. That's why he kept going to  
12:37:06 2 rehab. He couldn't stop on his own. Now I would like to  
12:37:15 3 turn to the evidence of a pattern of use or possession of a  
12:37:20 4 controlled substance that reasonably covers the time the  
12:37:22 5 firearm was possessed, including October 12th. First, you  
12:37:29 6 see the defendant's own words and messages from 2018 and  
12:37:33 7 2019, a year worth of messages from the spring of 2018 to  
12:37:39 8 the spring of 2019. And these messages alone establish a  
12:37:42 9 pattern of use of a controlled substance that reasonably  
12:37:46 10 covers the time the firearm was possessed, including  
12:37:50 11 October 12th when he bought the gun. And I'm not going to  
12:37:53 12 go through all of them, you saw them when Special Agent  
12:37:57 13 Jensen testified, you seen them with other witnesses, you'll  
12:38:02 14 have them. But briefly we see in these messages, him buying  
12:38:07 15 drugs, telling other people he's using drugs, describing  
12:38:11 16 himself as an addict, and we see it over this whole period  
12:38:14 17 of time. We see messages from April of 2018. We see  
12:38:20 18 pictures from April of 2018 of drugs and the defendant  
12:38:24 19 weighing drugs on scales. We see messages from May of 2018  
12:38:29 20 where he's using coded language. We see messages from May  
12:38:33 21 of 2018 where he's buying from multiple dealers. We see  
12:38:40 22 messages from June of 2018 where he's making purchases. And  
12:38:44 23 in July of 2018. And we see messages in October where he's  
12:38:51 24 buying, that's what he's telling Hallie Biden on October  
12:38:56 25 the 13th, and then later we see what he is buying when he

12:39:01 1 tells her that he's with Bernard who hangs out at 7-Eleven  
12:39:07 2 on Greenhill and Lancaster, and that he's waiting for a  
12:39:11 3 dealer named Mookie, and that his brother L is get in the  
12:39:15 4 car, and that he has my money and I'm getting pissed. And  
12:39:19 5 we see on the 14th, him telling Hallie Biden that he's  
12:39:23 6 sleeping on a car smoking crack on 4th and Rodney, what he  
12:39:27 7 calls his truth.

12:39:28 8           And we see addiction messages in October when  
12:39:35 9 Hallie Biden tells him she wants to help him get sober, she  
12:39:40 10 testified she was referring to both drugs and alcohol, not  
12:39:42 11 just alcohol. And in response, he says what one thing have  
12:39:47 12 you done to help me get sober? And we see other addiction  
12:39:51 13 messages in October where she talks about, where Hallie  
12:39:55 14 Biden talks about getting him into a rehab. And other  
12:40:00 15 addiction messages in November where the defendant calls  
12:40:04 16 himself an addict and where Hallie Biden pleads with him to  
12:40:09 17 try to address his addiction.

12:40:12 18           And other messages in November where he calls  
12:40:17 19 himself separately both a drunk and an addict.

12:40:24 20           And in messages in November, we see the word,  
12:40:30 21 relapse, which we see appear in his book, and it's clear  
12:40:35 22 from his own use of the word that relapse refers to his  
12:40:39 23 addiction to crack cocaine. We see drug messages in 2018  
12:40:49 24 where he's texting with a woman and talking about his crack  
12:40:53 25 use.



12:40:54 1 We see messages in November 18th where he's  
12:40:57 2 buying. We see addiction messages in 2018. We see both  
12:41:04 3 drug messages and addiction messages later in December of  
12:41:09 4 2018, including images. And we see messages in 2019. And  
12:41:19 5 in February of 2019. And in March of 2019.

12:41:26 6 We don't just have his messages from the time,  
12:41:31 7 although I submit that would be enough to convict. We also  
12:41:35 8 have his own words in his memoir describing buying and using  
12:41:39 9 drugs during that whole period from 2015 to 2019,  
12:41:44 10 four years, what he called four years of active addiction,  
12:41:52 11 and how he relapsed after numerous attempts at rehab,  
12:41:54 12 including after The View, the rehab center he went to for  
12:41:58 13 about a week late in August of 2018 in California.

12:42:03 14 And I'm not going to play the audio again, I'm  
12:42:06 15 not going to go back through all of the excerpts, just by  
12:42:11 16 way of book ends in his prologue, he referred to himself as  
12:42:15 17 a drug addict, and what is searingly painful, but I would  
12:42:20 18 submit personal and honest descriptions, and at the end when  
12:42:27 19 he talked about, at the end of his book when he talked about  
12:42:30 20 his four years of active addiction. His memoir also  
12:42:35 21 establishes a pattern of use of a controlled substance that  
12:42:39 22 reasonably covers the time the firearm was possessed,  
12:42:42 23 including October 12th when the gun was bought. Now we  
12:42:50 24 heard testimony from Kathleen Buhle, and this is also part  
12:42:53 25 of the pattern that she learned he was smoking crack in 2015

12:42:57 1 and in that period of time she searched his cars and found  
12:43:01 2 drug remnants and drug paraphernalia on approximately a  
12:43:05 3 dozen occasions, including in 2018, and that in that period  
12:43:08 4 the defendant discussed his addiction with her.

12:43:11 5 And we heard detailed testimony from Zoe Kestan,  
12:43:16 6 who was his companion through what he called his California  
12:43:21 7 Odyssey. The months and months and months of by his own  
12:43:25 8 description what he called debauchery rolling from one  
12:43:29 9 expensive hotel to another in Los Angeles. In sum, she saw  
12:43:36 10 the defendant smoking crack from December 17th from when she  
12:43:40 11 first met him, from the very first meeting, thru November of  
12:43:44 12 2018 when she was with him at a rehab facility where he was  
12:43:49 13 using drugs. And importantly, and I'll come back to this,  
12:43:52 14 including after his stay at The View, which again was at the  
12:43:55 15 end of August. She saw him at the end of September in that  
12:43:58 16 house in Malibu, and he was using crack cocaine again, just  
12:44:03 17 a few weeks before he bought the gun.

12:44:06 18 Again, she testified he was smoking something  
12:44:12 19 she assumed to be crack in their first meeting at Vivid  
12:44:17 20 Cabaret in Midtown Manhattan in 2017, the next time she saw  
12:44:22 21 him at the Soho Grand, he was smoking crack within 10 to  
12:44:27 22 15 minutes of her arrival. Within the next ten days she  
12:44:30 23 observed the defendant smoking crack often, sometimes as  
12:44:34 24 often as every 20 minutes. She also said importantly when  
12:44:37 25 they were out and about or busy talking to people, he would

12:44:42 1 excuse himself once an hour. She testified he was smoking  
12:44:45 2 crack in January of 2018 when she stayed with him at the  
12:44:49 3 Borgata in Atlantic City. He was smoking crack in February  
12:44:53 4 of 2018, when he stayed with her at The Four Seasons, and  
12:44:56 5 she also testified that the defendant bought drugs from a  
12:44:59 6 dealer named Frankie in New York in February of 2018 when  
12:45:04 7 they were staying at The Four Seasons.

12:45:06 8 The defendant was smoking habitually and  
12:45:09 9 frequently in March of 2018 while staying with Ms. Kestan  
12:45:12 10 for six days at The 6 Columbus Hotel in New York, and he was  
12:45:16 11 using in March of '18 at the Mercer Hotel in New York, and  
12:45:21 12 we saw pictures from that time depicting crack pipes in a  
12:45:25 13 glasses case next to the defendant in a bathroom. The  
12:45:29 14 defendant was smoking crack in April and May when they moved  
12:45:33 15 to California and stayed at the Chateau Marmont and we  
12:45:37 16 showed a picture of the defendant and Ms. Kestan in a  
12:45:40 17 bathtub with the defendant smoking crack on May 11th:  
12:45:44 18 Ms. Kestan testified that the defendant was purchasing crack  
12:45:47 19 and cocaine from various dealers in California at the  
12:45:51 20 Chateau Marmont in April and May of 2018. And that he began  
12:45:55 21 cooking powder cocaine into crack in May and began to do so  
12:46:01 22 in June of 2018. We saw pictures that reflected that,  
12:46:05 23 burned residue, substances used for cooking cocaine into  
12:46:08 24 crack, and for cleaning crack pipes and other crack  
12:46:12 25 paraphernalia. Ms. Kestan testified the defendant was

12:46:14 1 smoking crack in June, and that he was smoking crack in July  
12:46:18 2 and August, and that he was smoking crack in late September  
12:46:23 3 at the house in Malibu, again, after he had gone to The  
12:46:27 4 View. And then when she saw him again in early -- in early  
12:46:32 5 to mid November, he was again using, this time while he was  
12:46:39 6 receiving rehab in Massachusetts. She also testified that  
12:46:42 7 the defendant withdrew large sums of cash with which to buy  
12:46:46 8 drugs and that he also provided ATM codes to drug dealers so  
12:46:51 9 that they could withdraw money from his account to pay for  
12:46:54 10 his drug purchases.

12:46:55 11 She testified that the defendant stored drugs in  
12:46:58 12 leather pouches, that he discussed his addiction with her,  
12:47:01 13 and again, you saw photographs from her phone that shows the  
12:47:06 14 defendant with drugs and drug paraphernalia in 2018.

12:47:09 15 You also heard testimony from Hallie Biden that  
12:47:12 16 she saw the defendant smoke crack in 2016, '17 and '18.  
12:47:17 17 That he discussed his addiction with her. That he -- that  
12:47:21 18 she searched his car on multiple occasions including the day  
12:47:25 19 we spent so much time focusing on in October of 2018 as part  
12:47:31 20 of a pattern, and that pattern was to find drugs and drug  
12:47:35 21 paraphernalia and that was throughout that whole period in  
12:47:38 22 2016, 2017, and 2018. And she testified that when she saw  
12:47:44 23 the defendant on October the 23rd, he looked like he was  
12:47:48 24 exhausted and he was using drugs and that she searched his  
12:47:52 25 truck because she wanted to help him get sober, which she

12:47:56 1 said included off drugs.

12:47:57 2 You also heard testimony from Hallie Biden that  
12:48:01 3 she found drug remnants and drug paraphernalia in the  
12:48:04 4 defendant's truck on October 23rd, 2018, and that she found  
12:48:09 5 the defendant's leather pouch in that truck which we've  
12:48:13 6 learned contained trace amounts of cocaine.

12:48:15 7 On October the 31st, you saw that she texted the  
12:48:20 8 defendant that she had found another one of his brown  
12:48:23 9 leather pouches, this time in her home next to her son with  
12:48:27 10 a crack pipe sticking out of it. And you heard testimony  
12:48:32 11 and saw the pouch, that there was in fact cocaine on the  
12:48:35 12 inside of the pouch, the pouch that she retrieved from his  
12:48:38 13 truck to put the gun in.

12:48:40 14 Now, as I said, we don't have to prove that the  
12:48:44 15 defendant used in October. But you heard the argument from  
12:48:49 16 counsel, and it is just argument, that the defendant went to  
12:48:54 17 a rehab program in California at the end of August and then  
12:48:59 18 for a brief period of time had a sober companion, and that  
12:49:03 19 with that experience, he moved forward back to Delaware to  
12:49:11 20 October the 12th and that StarQuest Shooters and bought his  
12:49:15 21 gun, but critically there is overwhelming evidence that he  
12:49:19 22 used drugs after that rehab at The View.

12:49:24 23 We saw from the records again that it was a  
12:49:27 24 relatively brief period of rehab or detox. It ran, the  
12:49:33 25 residential part, only from August the 21st to August

12:49:38 1 the 27th, and he then had a sober companion live with him,  
12:49:43 2 apparently, at least some of the time at this house he was  
12:49:46 3 renting in Malibu, where Zoe Kestan later said there was no  
12:49:52 4 sober companion by the time she got there, and he was using  
12:49:56 5 drugs there regularly. We're really only talking 13 days at  
12:50:00 6 the end of August into very early September. And again, Zoe  
12:50:03 7 Kestan saw him after that. She testified he was smoking  
12:50:07 8 crack at The Freehand Hotel in Los Angeles on the 17th, and  
12:50:12 9 she testified that he was smoking crack at his house in  
12:50:16 10 Malibu between September 13th, when she got there and the  
12:50:19 11 23rd, when she left. She saw it in the bedroom, master  
12:50:23 12 bathroom, in the kitchen, she said it was all over. There  
12:50:27 13 was no sober companion there. And critically the defendant  
12:50:31 14 never even mentioned the rehab, the supposedly life changing  
12:50:34 15 rehab he had gone through at The View just a few days  
12:50:37 16 earlier.

12:50:38 17 Why didn't he mention it? Perhaps because he  
12:50:45 18 relapsed, as he told us. In Chapter 9, the chapter of his  
12:50:49 19 book about his time in California in 2018, he wrote, Uncle  
12:50:54 20 Jim had his own super power, he gets things done. So he  
12:50:58 21 jumped on a plane to Los Angeles, pulled me out of a room in  
12:51:04 22 the Hollywood Roosevelt, and said I found a place. Let's  
12:51:06 23 go. This is how the defendant described his rehab  
12:51:10 24 experience, not what you heard in opening, not that it was  
12:51:13 25 this event that propelled him clean and sober to October



12:51:17 1 the 12th, this is what he said. "I went, he checked me into  
12:51:21 2 a rehab center in Brentwood, where I stayed clean for about  
12:51:24 3 two weeks. I then lived in a rental off Nichols Canyon, in  
12:51:29 4 the hills, with a sober coach. It was great, the beauty,  
12:51:33 5 the peace, the support, right up until the moment I  
12:51:37 6 relapsed." Again, that searingly honest account of his  
12:51:43 7 time, he tells us he relapsed. Not that he started drinking  
12:51:49 8 again, as the defense lawyer argued in opening, but that he  
12:51:52 9 relapsed and was using crack again, because that's what this  
12:51:56 10 chapter talks about.

12:51:57 11 And he does it again in Chapter 10 of his book  
12:52:04 12 where he talks specifically about coming back to Delaware,  
12:52:09 13 where defense counsel said he came back clean and sober with  
12:52:13 14 a clear head, not thinking he was an addict anymore even  
12:52:18 15 though he had been one for years, knew he had been one for  
12:52:23 16 years, and only gone through this brief period of detox or  
12:52:26 17 rehab. What he said, what the defendant said was "I had  
12:52:29 18 returned that fall of 2018 after my most recent relapse in  
12:52:33 19 California with the hope of getting clean, (not staying  
12:52:36 20 clean), through a new therapy and reconciling with Hallie  
12:52:43 21 and neither happened"

12:52:48 22 And then moving into October, we see messages  
12:52:54 23 that the defendant was using again. You saw these messages  
12:52:59 24 this morning. You saw his setting up meetings in the days  
12:53:04 25 right before he purchased the gun on October 9th and

12:53:07 1 October 10th, meetings at the 7-Eleven. And you see the  
12:53:13 2 person he's talking about ask him, "you want the same."  
12:53:17 3 This is Q who tells him he's at the 7-Eleven." And the  
12:53:21 4 defendant tells him on the 11th, the day before he bought  
12:53:26 5 the gun, "meet me at the 7-Eleven at three."

12:53:31 6 Now that's the 11th, the day before he bought  
12:53:35 7 the gun. On the 13th, the day after he bought the gun, he  
12:53:41 8 tells Hallie Biden he's buying, and then if you look at the  
12:53:46 9 time, shortly thereafter telling her he's buying, he  
12:53:50 10 describes that he's with Bernard, who hangs out at the  
12:53:53 11 7-Eleven on Greenhill and Lancaster, the same 7-Eleven that  
12:53:58 12 you saw from the location data this morning where he went on  
12:54:02 13 the 16th, and he tells her "I'm now off Maryland Avenue  
12:54:06 14 behind Blue Rock Stadium waiting to for a dealer named  
12:54:10 15 Mookie", I read it to you, you seen it, he describes it  
12:54:14 16 almost in real time, this drug purchase almost in real time.

12:54:17 17 And then moving forward in time to the 16th, we  
12:54:21 18 see he's at that 7-Eleven, the 7-Eleven where he said the  
12:54:26 19 dealer was. And what does he say about meeting at 7-Eleven  
12:54:29 20 in his book? He said "no dealer works off a user's urgent  
12:54:35 21 timetable so you arrange to meet in front of a 7-Eleven on  
12:54:39 22 such and such street, then you sit in your car and wait."

12:54:43 23 Now, in between those messages on the 11th and  
12:54:50 24 the 13th and the 16th, it specifically referenced 7-Eleven,  
12:54:55 25 there are other messages obviously on the 14th, and you're

12:54:59 1 familiar with them, you have seen them. The one where he  
12:55:02 2 tells Hallie Biden he's sleeping on a car smoking crack on  
12:55:05 3 4th Street and Rodney, and he says that's my truth. The  
12:55:09 4 defense counsel argued in opening that that was somehow a  
12:55:14 5 lie. Take the defendant's word for it. That's his truth.

12:55:18 6 And defense counsel argued well he didn't want  
12:55:23 7 to see Hallie Biden, so he made up the elaborate story of  
12:55:27 8 the names of dealers and these locations and the play by  
12:55:30 9 play. Well you were instructed, you use your common sense.  
12:55:34 10 The evidence is in this room, but you bring your common  
12:55:37 11 sense into that jury box, use your common sense, if he  
12:55:40 12 didn't want to see Hallie Biden on October the 13th, let's  
12:55:43 13 look at what he could have said. He asked her where she  
12:55:46 14 was. She responded she's home. And then she asks where are  
12:55:51 15 you, Delaware or D.C., he says New Castle, he says Delaware.  
12:55:55 16 If he didn't want to see her, he didn't have to makeup this  
12:55:58 17 elaborate story of two drug deals, he could have just said  
12:56:03 18 D.C. You don't leave your common sense behind when you come  
12:56:07 19 into that jury box and you should apply it here to that  
12:56:10 20 argument.

12:56:11 21 And we saw addiction messages in October of  
12:56:16 22 2016. Lots of addiction messages in October of 2018, in the  
12:56:20 23 period of time after he bought the gun and when he possessed  
12:56:24 24 it.

12:56:24 25 Now, the drug messages that I just highlighted

12:56:30 1 several of, as I said covered April of 2018 into March of  
12:56:36 2 2019, and there was also testimony obviously about habitual  
12:56:41 3 drug use in that period. And there is frankly undisputed  
12:56:44 4 testimony that the defendant was using crack in July of  
12:56:48 5 2018. And defense counsel asked a lot of questions of  
12:56:50 6 various witnesses about whether there were messages in  
12:56:55 7 October that were like messages in other months. And  
12:56:59 8 sometimes, he even used the specific words, if a message  
12:57:03 9 said eight ball, was there a message that said eight ball in  
12:57:06 10 October. Well, there was one message that said eight ball,  
12:57:10 11 of course it was later, we're not expecting to see that  
12:57:14 12 exact same phrasing, and the absence of that isn't evidence  
12:57:17 13 of anything. If you step back and you wonder in a month  
12:57:20 14 with habitual use, if the contrast defense counsel is trying  
12:57:25 15 to draw is between October and other months, what does that  
12:57:29 16 look like? How many -- on how many days do we see drug  
12:57:34 17 messages in a month like July where he's using heavily. One  
12:57:38 18 day. Why is that? Well, these messages are only one of the  
12:57:46 19 ways you heard testimony about how he bought drugs. He  
12:57:51 20 called people on the phone, you heard testimony about that.  
12:57:54 21 In his book, he described driving into certain parts of town  
12:57:58 22 to buy drugs. And you can imagine and he talked about all  
12:58:04 23 of the ways he got drugs other than specifically sending  
12:58:09 24 messages. But for comparison purposes, this is what you  
12:58:13 25 see, a month of heavy drug use, one day with those kind of

12:58:17 1 messages. What does October look like, twice as many. We  
12:58:26 2 see drug messages on the 13th and 14th, we saw meeting  
12:58:30 3 messages, as I said, on the day before drugs were purchased.  
12:58:33 4 But this idea that there was heavy drug use and that  
12:58:37 5 correlates with many messages over many days, and there  
12:58:41 6 isn't that in October and therefore that -- you should draw  
12:58:44 7 the inference from that that he wasn't using or wasn't  
12:58:47 8 addicted, simply isn't born out by the evidence.

12:58:50 9           What do we know specifically about that month of  
12:58:56 10 October. You see on the screen those drug messages on the  
12:59:00 11 13th and the 14th. You see the addiction messages depicted  
12:59:04 12 on the 15th and the 23rd. You see the meeting messages on  
12:59:08 13 the 10th and the 11th, the day before he bought the gun on  
12:59:11 14 the 12th, and you see on the 23rd both addiction messages  
12:59:15 15 and drug remnants and drug paraphernalia recovered by Hallie  
12:59:20 16 Biden in the truck. That's a lot of evidence of drug use  
12:59:26 17 and addiction in the month of October. It is evidence  
12:59:29 18 beyond a reasonable doubt.

12:59:30 19           And what else do we see in October? We see that  
12:59:34 20 persistent cash withdraws, hundreds and thousands of dollars  
12:59:39 21 every day. And that's part of a pattern that was over  
12:59:43 22 September, October, and November, almost a hundred -- more  
12:59:51 23 than \$150,000 that was pulled out of ATMs in those three  
12:59:56 24 months, day-to-day, over and over and over again. And we  
12:59:59 25 know, we know that he was using in both October and November

13:00:03 1 and the cash is consistent across September, October, and  
13:00:07 2 November.

13:00:09 3           Zoe Kestan testified cash was used to pay for  
13:00:13 4 drugs, and you heard other testimony that you can't use a  
13:00:15 5 credit card to pay for drugs, and that goes without saying.  
13:00:18 6 And what kind of amounts did the defendant pay? Well we  
13:00:22 7 heard in his book when he was in Nashville about \$1,500.  
13:00:26 8 And then we see in November an amount about that. And that  
13:00:31 9 range, in the mid thousands, occurs over and over again in  
13:00:39 10 this three-month period, including October.

13:00:44 11           Now, defense counsel asked questions about  
13:00:47 12 whether the money, the cash was used for rehab. And the  
13:00:53 13 evidence is it wasn't. And that's because the rehab was  
13:00:56 14 paid for in August. None of the cash in September, October,  
13:01:02 15 or November was for rehab. You see each of the invoices,  
13:01:06 16 and these are in evidence, show that there was no balance,  
13:01:12 17 they didn't take credit. The defendant was required to pay  
13:01:16 18 for the rehab on the day it started. And you see that over  
13:01:19 19 and over again. It was paid on August the 21st for that  
13:01:24 20 day, on the 23rd for the next couple of days, on the 24th  
13:01:27 21 for that day, on the 24th for the next few days after that,  
13:01:34 22 on the 27th for that day, and the sober companion was all  
13:01:40 23 paid up by the 27th as well, so no money, none of that cash  
13:01:45 24 was used to pay for rehab.

13:01:47 25           Defense also suggested or asked through his



13:01:50 1 questions whether the cash in September was for Airbnb, and  
13:01:54 2 again we see in the evidence that that is not the case. The  
13:01:57 3 defendant paid for the Airbnb where he was staying using his  
13:02:00 4 Visa check card, which is not an ATM withdraw.

13:02:06 5 Now, you heard testimony that the defendant was  
13:02:11 6 in New York in between when he bought the gun and when  
13:02:14 7 Hallie Biden found it. Naomi Biden testified that the  
13:02:18 8 defendant came to New York on October 15th to get back his  
13:02:22 9 Ford Bronco, you heard testimony this morning that that date  
13:02:25 10 wasn't accurate, he actually was still in Delaware, and was  
13:02:29 11 -- and the evidence you saw was that there were these  
13:02:32 12 meetings set up and his location put him at the 7-Eleven  
13:02:37 13 that's described in that text message where he met Bernard,  
13:02:47 14 and by October the 17th he still hadn't retrieved his truck  
13:02:51 15 and his daughter messaged him in the afternoon. He didn't  
13:02:55 16 respond until a little before midnight.

13:03:00 17 And then at 2:42 in the morning, he asked "where  
13:03:06 18 are the keys to the truck" and more remarkably whether her  
13:03:11 19 fiance could bring the truck to 57th and 5th, so he could  
13:03:15 20 trade with them, this is 2:40 in the morning on a Thursday  
13:03:18 21 and he's asking his daughter, who lives in Brooklyn, if her  
13:03:23 22 fiance can drive into Manhattan to exchange cars when he's  
13:03:27 23 been there for some amount of time by this point, and his  
13:03:31 24 daughter responded by asking right now, and then the  
13:03:34 25 defendant never responded.

13:03:35 1 We know from the text message that he was  
13:03:38 2 actually at The Four Seasons in New York on the 18th. Then  
13:03:42 3 she texted him later on the 18th, this time in the daytime,  
13:03:46 4 in the afternoon, asking to try to set up an exchange for  
13:03:50 5 the car, and asking if she could see him, and her father  
13:03:56 6 told her no. And she said I'm sorry, really sorry, dad, I  
13:04:01 7 can't take this, and then I don't know what to say, I just  
13:04:04 8 miss you so much.

13:04:05 9 Remember, the testimony, the reason I think she  
13:04:09 10 was called was to try to suggest he was somehow okay. Well,  
13:04:14 11 this isn't okay. Texting at 2:40 in the morning asking to  
13:04:21 12 come to Midtown Manhattan to exchange the truck means the  
13:04:27 13 defendant is not okay when he's in New York on the 18th.

13:04:30 14 And then hours later at 10:30 the defendant  
13:04:33 15 texts her, "I'm sorry I have been so unreachable. It's not  
13:04:39 16 fair to you." You remember her testifying that when he was  
13:04:42 17 using, it was difficult to communicate with him. And she  
13:04:45 18 testified she didn't know why he had been unreachable.

13:04:51 19 And then finally on the following day on the  
13:04:51 20 19th, they were able to set up a time to meet and the  
13:04:54 21 defendant picked up his truck, days after, no matter when  
13:04:59 22 you start the time frame, he got to New York.

13:05:04 23 Critically when she returned the truck to her  
13:05:14 24 father on the 19th, there was no drug remnants in it and no  
13:05:18 25 drug paraphernalia, and I'll return to that in a moment. As

13:05:20 1 I said, Hallie Biden testified she saw the defendant on the  
13:05:23 2 morning of the 23rd, which would be 10/23. He looked  
13:05:27 3 exhausted and it looked like he had been using drugs. After  
13:05:31 4 he got to her house, he went to sleep. Then she searched  
13:05:35 5 the truck, which was part of a pattern of looking for drugs  
13:05:38 6 and alcohol, a pattern, that's the word the jury  
13:05:41 7 instructions uses, a pattern of active use, that included  
13:05:45 8 October of 2018. And she testified that she did this in an  
13:05:49 9 effort to try to help him get or stay sober.

13:05:52 10 And if you compare what Naomi Biden said that  
13:05:56 11 she returned the truck to her father clean on October 19th,  
13:06:01 12 2018, that there were no drug remnants in it and there was  
13:06:06 13 no drug paraphernalia in it, to Hallie Biden's testimony  
13:06:10 14 that she searched the truck on October 23rd, just a few days  
13:06:14 15 later, that she found drug remnants. Remember, the way she  
13:06:18 16 testified what a drug remnant is, is when you break pieces,  
13:06:23 17 smaller pieces of crack off a larger rock, a lot of it falls  
13:06:27 18 and breaks off, that's what a remnant is, and that's what  
13:06:31 19 Hallie Biden saw in that truck on October the 23rd, and she  
13:06:35 20 also found drug paraphernalia.

13:06:37 21 So what does that mean? What does a clean truck  
13:06:41 22 with no drug remnants and no drug paraphernalia on  
13:06:45 23 October 19th, as in the testimony of the defendant's own  
13:06:48 24 daughter, and then a truck with drug remnants and drug  
13:06:51 25 paraphernalia on the October the 23rd, what does that mean?

13:06:56 1 It means the defendant used crack in the truck between  
13:07:00 2 October 15th, 2018, and October 23, 2018, October 19th, when  
13:07:05 3 he got it back. Now nobody saw it, right? But you heard  
13:07:10 4 Her Honor instruct you that we rely on circumstantial  
13:07:14 5 evidence just as much as we rely on direct evidence. And  
13:07:19 6 this is circumstantial evidence beyond a reasonable doubt  
13:07:21 7 that he used drugs in that truck in that period.

13:07:24 8 It's like if you go to bed at night in the  
13:07:27 9 winter and there is no snow on the ground, and you wake up  
13:07:30 10 the next morning and there is snow on the ground, you know  
13:07:33 11 it snowed. And that's what this evidence showed. The  
13:07:35 12 defendant used drugs in that truck in between the time his  
13:07:39 13 daughter returned it, whenever it was in that week and when  
13:07:44 14 Haley Biden found the gun in it.

13:07:48 15 So to be clear, what leads to the three felony  
13:07:51 16 charges in this case are the defendant's choices, not anyone  
13:07:55 17 else's. The testimony, the texts, and the photographs that  
13:08:00 18 are evidence of his addiction may provoke disgust or  
13:08:05 19 sympathy, or both, but the defendant wasn't charged with  
13:08:08 20 being an addict and as Mr. Hines said in opening, while  
13:08:12 21 addiction is not a choice, buying a gun is. And lying to  
13:08:16 22 buy that gun is a choice. And that, that is why we're here.

13:08:22 23 The evidence that the defendant made those  
13:08:26 24 choices to buy a gun and to lie about it and that he knew he  
13:08:31 25 was lying about it, that he did it knowing exactly what he

13:08:35 1 was doing is beyond a reasonable doubt.

13:08:38 2 It supports only one verdict, guilty as to all  
13:08:44 3 three charges.

13:08:45 4 Thank you.

13:08:55 5 THE COURT: All right. Thank you. Mr. Lowell.

13:08:58 6 MR. LOWELL: Thank you, Your Honor.

13:09:01 7 Thank you, ladies and gentlemen.

13:09:05 8 When we met a week ago, it seems a lot longer  
13:09:15 9 doesn't it, I told you some of the things the evidence would  
13:09:17 10 show. And told you some of the things that the prosecutors  
13:09:22 11 could not satisfy to meet their very high burden of proof on  
13:09:28 12 these very serious charges beyond a reasonable doubt. So  
13:09:34 13 how did they just begin their closing argument? With  
13:09:39 14 raising whether Hunter's mom, or wife, or sister, or other  
13:09:47 15 relatives were sitting in the courtroom.

13:09:52 16 Judge Noreika then at opening will -- has  
13:09:58 17 explained some of these important concepts and will when  
13:10:01 18 we're done. And these concepts about the burden and these  
13:10:06 19 concepts about how high that burden is are there to ensure  
13:10:12 20 that no person in your country is convicted improperly.

13:10:17 21 She has instructed you that the presumption of  
13:10:21 22 innocence means that the defendant has no burden or  
13:10:24 23 obligation to present any evidence at all or to prove he is  
13:10:30 24 not guilty. That burden of, or obligation of proof is on  
13:10:33 25 the government to prove that the defendant is guilty, and it

13:10:37 1 stays with the government throughout the trial.

13:10:41 2 Reasonable doubt. A reasonable doubt is a fair  
13:10:47 3 doubt based on reason, logic, common sense, or experience.  
13:10:50 4 Here is the important part. It's a doubt that an ordinary  
13:10:55 5 reasonable person has after carefully weighing the evidence,  
13:11:00 6 and it's a doubt of the sort that would cause him or her to  
13:11:04 7 hesitate to act in the matters of importance in his or her  
13:11:09 8 own life.

13:11:10 9 It can also arise by a lack of evidence. This  
13:11:14 10 is such a, "important matter".

13:11:18 11 You will see in the instructions as well, an  
13:11:22 12 incredibly important phrase, which I will come back to you a  
13:11:26 13 couple of times while I'm standing here, because what that  
13:11:30 14 instruction also says is that reasonable doubt and the  
13:11:34 15 burden of proof beyond reasonable doubt does not occur by  
13:11:38 16 the phrase in the instruction is suspicion or conjecture.

13:11:44 17 So, because his daughter, Naomi said that he  
13:11:49 18 came to New York and she thought about and then said the  
13:11:54 19 15th, they then proceed to try to put in as they did texts  
13:11:58 20 that would suggest that it was later, or what happened  
13:12:02 21 before, and I'll come back to this one, is exactly that  
13:12:07 22 conjecture and suspicion.

13:12:10 23 With this very high burden, it's time to end  
13:12:14 24 this case. So let me start with what you just heard as  
13:12:20 25 well.



13:12:21 1 In opening, I told you that the prosecutors  
13:12:25 2 would do what they just did again, they would take various  
13:12:29 3 years and make a continuum and then like an accordion sling  
13:12:36 4 it all down as if it happened in the period of relevance  
13:12:40 5 here. What is that burden to convince each and every one of  
13:12:43 6 you individually that you should convict Hunter on these  
13:12:46 7 three felony charges.

13:12:48 8 As I said, the key requirement in each of these  
13:12:51 9 is that Mr. Biden made a false statement while acquiring a  
13:12:58 10 firearm from the seller. And you will see that statement  
13:13:04 11 when made was not what he believed to be false.

13:13:08 12 You see as you are expressed that it has to be  
13:13:14 13 material, and I'll come back to that one, and you will see  
13:13:18 14 why on that day we presented the questions that we did so  
13:13:21 15 that you will see what was or was not material.

13:13:23 16 In Count 2, it says Mr. Biden knowingly made a  
13:13:27 17 statement or representation, knowingly in an ATF form that  
13:13:32 18 he knew the statement or representation was true. And we  
13:13:36 19 have said and spoken and showed you that the word knowingly  
13:13:40 20 cannot be proved beyond reasonable doubt, or that his  
13:13:44 21 representation was false, or that he at the time, and I'll  
13:13:50 22 come back, knew the statement was untrue.

13:13:54 23 And the third is that Hunter knowing, knowing  
13:13:58 24 that he was an unlawful user of a controlled substance or  
13:14:02 25 addicted to a controlled substance did knowingly possess a

13:14:06 1 firearm, and again, the critical phrase or word that the  
13:14:11 2 prosecutors leave out are the issue of knowing. And I will  
13:14:16 3 come back to that.

13:14:17 4           You just heard that Mr. Wise said he knew he was  
13:14:23 5 an addict and wrote about that he was an addict and spoke  
13:14:27 6 about the fact that he was an addict as if that was in real  
13:14:30 7 time. But this is what you will have heard already. A  
13:14:34 8 person accounts knowingly if the person acts voluntarily and  
13:14:37 9 intentionally and not because of a mistake, an accident, or  
13:14:41 10 some other innocent reason. That means the government must  
13:14:44 11 prove beyond a reasonable doubt that the defendant was  
13:14:46 12 conscious and aware of the nature of the actions and of the  
13:14:50 13 surrounding facts and circumstances as specified in the  
13:14:53 14 definition of offenses charged.

13:14:56 15           That means that knowingly is not just what you  
13:15:00 16 heard, that it applies to the count about simply whether he  
13:15:03 17 thought at the time a form was run, but knowingly also  
13:15:08 18 applies to the other count about possessing.

13:15:12 19           I want to address this issue of his use, of  
13:15:15 20 course I want to address that. And then how do the  
13:15:18 21 prosecutors try to prove that that occurred beyond a  
13:15:23 22 reasonable doubt. They spent hours, I mean literally hours  
13:15:26 23 recounting Hunter's terrible journey through alcohol and  
13:15:31 24 drug abuse. Most, of what I explained when I first met you,  
13:15:35 25 that he admitted, as you just heard. As if him saying I am

13:15:39 1 an addict after the fact meant that he was an addict  
13:15:43 2 throughout the period and knew it in the way it was  
13:15:45 3 expressed.

13:15:46 4 But remember what they did again. They blurred  
13:15:49 5 all those years before he walked into StarQuest Shooters,  
13:15:54 6 and a year and two later. What they did was squeeze 2016,  
13:16:00 7 2017, early 2018, and when they say 2018, please pay close  
13:16:07 8 attention to how they take the first part, wherein his own  
13:16:11 9 words, his own book, he doesn't deny that he was in that  
13:16:15 10 period of time, and then skip as if the same would apply  
13:16:19 11 later in the year. Remember again the book with all that's  
13:16:24 12 said and written by him was after the fact, looking readily  
13:16:30 13 backwards, not what he thought at the time. And as Agent  
13:16:34 14 Jensen said, it was not a diary.

13:16:37 15 And I told you when we met and I'll tell you  
13:16:40 16 again now, that to do what I just said about condensing all  
13:16:44 17 that time, and telling you when he writes he's readily  
13:16:48 18 admitting in every part of those years that he was what the  
13:16:53 19 law forbids him from being.

13:16:58 20 Have you ever seen the magicians trick of having  
13:17:04 21 you look at this hand, while in the other hand is where the  
13:17:09 22 trick is being done? Look at this, and then see that in the  
13:17:14 23 hand that matters, there is nothing there.

13:17:18 24 Because when you got to 2018, what was missing?  
13:17:24 25 Remember that book, Beautiful Things, that he wrote and was

13:17:29 1 published in 2021, what did it say about the time in Los  
13:17:35 2 Angeles from August, when he went to The View, to the time  
13:17:39 3 he bought the gun? Not after the incident in which the gun  
13:17:43 4 was thrown out and he had that occasion to be involved with  
13:17:47 5 Hallie, but in that period, in that book, do you remember?  
13:17:51 6 Nothing.

13:17:51 7 Remember what the text said about the time in  
13:17:54 8 Los Angeles from August when he went to The View to the time  
13:17:58 9 he bought the gun, again, nothing.

13:18:03 10 Yes, I'll come back to what you saw this  
13:18:06 11 morning. In fact, you recall the very specifics that Hunter  
13:18:10 12 writes about his use in 2016, 2017, and the earlier 2018,  
13:18:16 13 and all the other years before and after the fall of 2018.  
13:18:22 14 You will remember that in 2016 or '17, you will recall  
13:18:28 15 specific photos as you saw them a moment ago, right? Look  
13:18:36 16 at the spring of 2018. There are packages of drugs. There  
13:18:41 17 is a scale with drugs. You'll remember that there are  
13:18:45 18 pipes, a photo with ashes in a bathroom, for 2016 and 2017  
13:18:51 19 and the first part of 2018, but then when we got to the  
13:18:57 20 period between August and the time you have been talking  
13:19:03 21 about in this case, what did you not see? Any such photos.

13:19:08 22 And then they did it again. With crunching  
13:19:12 23 texts from the period before October the 9th into October  
13:19:18 24 the 16th, you can keep going, where I point out and show  
13:19:23 25 you, you won't see those kinds of photos. You won't see

13:19:27 1 those kind of words. You won't see those kinds of scales or  
13:19:32 2 the like.

13:19:41 3 So let's go to the proof that they have tried to  
13:19:47 4 show you weighs the scale beyond reasonable doubt. Zoe  
13:19:53 5 Kestan, who said Hunter was going and was -- when she saw  
13:19:57 6 him in late -- no, whenever she said, August into September,  
13:20:02 7 late September, says that he was using drugs in the two days  
13:20:05 8 she saw him. First of all, remember even then, that's a few  
13:20:11 9 weeks before he returns, even so. Consider that against the  
13:20:14 10 evidence that when he left The View, you have already seen  
13:20:19 11 some of the evidence of what he was doing. He was at The  
13:20:24 12 View, and I'll come back to that time period, and he was  
13:20:28 13 working with what are called sober coaches, and you know  
13:20:33 14 that that happened in that period of time as well. He was  
13:20:37 15 living with, and you can see from the evidence, continuing  
13:20:41 16 on occasion to see something called that sober coach. And  
13:20:45 17 you also know in this period of time that he was visited by  
13:20:51 18 his daughter who was introducing him to her now husband when  
13:20:55 19 she --

13:20:57 20 MR. WISE: Your Honor, I object. Can we come to  
13:20:59 21 side-bar?

13:23:15 22 THE COURT: Yes, you may.

13:23:15 23 (Side-bar discussion:)

13:23:15 24 THE COURT: OKAY.

13:23:15 25 MR. WISE: My objection, using rough transcripts

13:23:15 1 is improper. This is a rough transcript. This is not the  
13:23:15 2 final. They are not going to get to see the transcript.  
13:23:15 3 This makes them think they can see transcript. It's their  
13:23:15 4 memory that controls. They put their thumb on the notes,  
13:23:15 5 this puts a thumb on the scale that somehow it weighs what  
13:23:15 6 they know. We asked them to exchange demonstratives. If I  
13:23:15 7 knew he was going to use transcript quotes, I would have  
13:23:15 8 objected. We never used them.

13:23:15 9 MR. LOWELL: Never in twenty-five trials have I  
13:23:15 10 heard that. I can introduce it as what your memory says as  
13:23:15 11 to what he said, but I certainly can point to something and  
13:23:15 12 I can certainly read it to see if --

13:23:15 13 THE COURT: Yes, it's a question of whether you  
13:23:15 14 put it up on the screen which makes it seem more vouched  
13:23:15 15 for.

13:23:15 16 MR. LOWELL: Can I stipulate that? I don't have  
13:23:15 17 to put it on the screen.

13:23:15 18 THE COURT: Just like Mr. Wise said, Zoe Kestan  
13:23:15 19 testified whatever, you can say she testified whatever, it's  
13:23:15 20 a difference between putting a rough transcript on the  
13:23:15 21 screen so it just -- it sort of --

13:23:15 22 MR. LOWELL: I have never heard that before,  
13:23:15 23 said before, their memory would do, it's an aid, you're  
13:23:15 24 telling me I can't do it, I can introduce as your memory  
13:23:15 25 will prevail this is what he said.



13:23:15 1 THE COURT: Why don't you not put it on the  
13:23:15 2 screen.

13:23:16 3 (End of side-bar.)

13:23:16 4 MR. LOWELL: Let me say again that of course you  
13:23:18 5 have to use your own memory, but you'll remember, for  
13:23:21 6 example, that his daughter said that we met him at a coffee  
13:23:24 7 shop and we had lunch with him and we met his sober coach.  
13:23:29 8 That wasn't all. Agent Jensen told you that as well. She  
13:23:35 9 said does this exhibit contain records showing the  
13:23:38 10 defendant's stay at a rehab center and with a sober coach.  
13:23:42 11 And her answer was yes.

13:23:44 12 So I want you to weigh Zoe Kestan's immunized  
13:23:50 13 testimony and I'll come back to a special instruction that  
13:23:53 14 you heard Judge Noreika say about her, that came about after  
13:23:56 15 seeing the prosecutors, if you will you remember to prepare  
13:23:59 16 or should I say rehearse.

13:24:03 17 MR. WISE: Objection, Your Honor. Objection.

13:24:08 18 THE COURT: They can make -- you can't give your  
13:24:10 19 opinion of those things, but they can make their own  
13:24:13 20 determination.

13:24:14 21 MR. LOWELL: To meet three times for a total of  
13:24:17 22 how many? Six hours with the fact that she admitted that  
13:24:23 23 she would not go out with Hunter until after she found out  
13:24:27 24 who he was, was more than willing to use drugs with him,  
13:24:31 25 even introduce him to sellers in Rhode Island when Hunter

13:24:35 1 was trying to be in rehab, spent lots of his money, and also  
13:24:39 2 showed you the only photos of drug use in prior and later  
13:24:44 3 years from her phone. And Mr. Wise referred to her and her  
13:24:52 4 photos. But for all she could do to back up her word after  
13:24:57 5 all she had done to meet with the prosecution team, when she  
13:25:02 6 said she could show that in those prior times in 2018 and  
13:25:06 7 later in 2018 in the fall, winter and into 2019, remember  
13:25:12 8 what her photos showed in September when she said she was  
13:25:18 9 with Hunter for two days? This was the photo she showed.  
13:25:23 10 It's a selfie of her, at the hotel called Freehand. Unlike  
13:25:29 11 those other photos, Hunter is not in the hotel room, not  
13:25:34 12 bathroom, not ashes, not any of the things that the  
13:25:38 13 government kind of went through piece by piece in her photos  
13:25:45 14 when it was in fact Hunter was using. What about the next  
13:25:48 15 one? This was when he said -- she said she visited him at  
13:25:52 16 the Malibu house. And what is it? It's a picture of Hunter  
13:25:57 17 in the house smoking a cigarette. Not a crack pipe. No  
13:26:05 18 bong, no other paraphernalia, smoking a cigarette. In the  
13:26:10 19 critical time that you have to believe Zoe Kestan when Zoe  
13:26:14 20 Kestan has photo after photo after photo when he is using  
13:26:19 21 what the government readily points to you, what does she not  
13:26:23 22 have? In this case no pipes, no scales, no drugs, not even  
13:26:29 23 alcohol bottles. Once again, the lack of photos can speak  
13:26:34 24 more loudly than the spoken by her under her grant of  
13:26:41 25 immunity.

13:26:42 1           Where else did they go? Poor Hallie Biden, who  
13:26:47 2           had to be dragged through this period of her life again, who  
13:26:51 3           understandably did not remember a lot of the details. But  
13:26:54 4           even she said she did not see Hunter using drugs in this  
13:26:58 5           period. And said only that when she went into the truck on  
13:27:04 6           October 23rd, first she said there were remnants and  
13:27:07 7           paraphernalia, but then when asked said a dusting of powder,  
13:27:12 8           I guess. And when I asked her to be more specific and tell  
13:27:17 9           us whether those remnants were on the console, steering  
13:27:21 10          wheel, floor mats, or car seat, all do you remember she said  
13:27:25 11          is, I do not recall.

13:27:28 12                   And when asked what type of paraphernalia, she  
13:27:32 13                   again said, I do not recall.

13:27:36 14                   Was she remembering what she saw that day or  
13:27:40 15                   dozens of other days when she, too, was using, where that  
13:27:47 16                   more likely than not happened, okay. But if you noticed,  
13:27:52 17                   she could remember that which the prosecutors asked her, the  
13:27:54 18                   prosecutors who also gave her immunity, but not so much for  
13:27:59 19                   any number of things. When she saw Hunter when he came back  
13:28:03 20                   from LA, even if it was on the day he came back to go with  
13:28:08 21                   her at an appointment she had at a Caron rehabilitation  
13:28:12 22                   center or facility, when she saw him -- or when she saw him,  
13:28:16 23                   whether it was October 22nd or 23rd, whether it was the  
13:28:20 24                   night, whether it was the night before, whether it was the  
13:28:22 25                   early morning or when. And you'll remember that I asked her

13:28:27 1 whether or not when I could refresh her recollection, did  
13:28:31 2 she know that she was not with him that morning. And do you  
13:28:35 3 remember when I had to do that by saying do you remember the  
13:28:39 4 reference to calling an Uber? And then she said yes. You  
13:28:44 5 don't need an Uber to go from her driveway into the house.

13:28:49 6 And again, it was the government's own exhibit,  
13:28:53 7 which showed in Hunter's accounts that on the day of the  
13:28:59 8 22nd, and on the day of the 23rd, there are debits for the  
13:29:08 9 Best Western hotel in Wilmington, Delaware. Only after my  
13:29:11 10 reminding her of her own texts about a hotel did she then  
13:29:19 11 say yes, that's where he was, not at her house.

13:29:24 12 She also could not explain those exchanges I had  
13:29:28 13 with her about where those calls back and forth, where are  
13:29:33 14 you, meant she obviously wasn't with him. Or when I asked,  
13:29:40 15 where the pouch was in the truck, or where and when it got  
13:29:45 16 there, or whether her going to the truck was to look for  
13:29:49 17 drugs, or in the context of her are you with someone texts,  
13:29:54 18 for another reason. Why won't you answer my calls? Where  
13:29:59 19 are you? Are you with someone?" And then I asked her  
13:30:04 20 whether that someone was her concern about being with  
13:30:09 21 somebody who might be with drugs or another woman? You  
13:30:13 22 remember what she said. Another woman.

13:30:15 23 And there are the two texts right after this  
13:30:20 24 accusatory set of texts asking where he was and with whom,  
13:30:26 25 which you have seen now all sorts of times, where he writes

13:30:30 1 her and says he's with that dealer named Mookie or he's at  
13:30:34 2 the 7-Eleven, and indeed, he did write those. And you saw  
13:30:38 3 only this morning Agent Jensen saying he then at various  
13:30:42 4 times in the weeks before -- a week before or at some other  
13:30:46 5 time went to the 7-Eleven, and you saw in the text this  
13:30:50 6 morning if you remember that one of those occasions was that  
13:30:53 7 4 or 5 o'clock in the morning where he writes to her "are  
13:30:57 8 you up?" Or when he said "I am locked out of the house."  
13:31:01 9 And at that hour, where was he, according to Agent Jensen,  
13:31:06 10 at the 7 -- Eleven. They want to give you the inference  
13:31:11 11 that what he was doing at that 7-Eleven was buying drugs in  
13:31:14 12 the morning as opposed to a cup of coffee while he waited  
13:31:18 13 for Hallie to wake up.

13:31:21 14 And when they can or when they dig or when they  
13:31:29 15 try, they have shown you when they can corroborate where he  
13:31:34 16 was with location data, and when they suggest, as I asked  
13:31:39 17 Agent Jensen, when they went backwards to find other  
13:31:41 18 occasions, was he really at the place, whether he is just  
13:31:46 19 putting somebody off and saying meet me at the 7-Eleven. Do  
13:31:50 20 you notice this morning that a person writes to him, writes  
13:31:54 21 to him and then it could be any number of hours or time in  
13:31:59 22 which he responds, then, you remember what? No location  
13:32:02 23 data.

13:32:03 24 And Hallie told you what you didn't need her to  
13:32:09 25 tell you given the nature of their relationship at any given

13:32:13 1 time, he would lie to her about where he was and that would  
13:32:17 2 certainly include when he was with another woman. And she  
13:32:21 3 said just to be clear about it, you mention that you cannot  
13:32:25 4 trust what he says when he writes to you because you find  
13:32:27 5 out sometimes he's lying, correct? And of course she said  
13:32:33 6 correct.

13:32:33 7 And I asked whether she knew on that occasion  
13:32:36 8 when he said he was sleeping on a car, or at the  
13:32:40 9 7-Eleven that day for that reason as opposed to any other  
13:32:44 10 reason, she did not know. Now, let me stop here. I am not  
13:32:49 11 suggesting that the years that he was in Delaware and that  
13:32:51 12 he was using drugs, that couldn't happen at a 7-Eleven, it  
13:32:56 13 couldn't happen at some other place, but that's what they  
13:32:59 14 did do, they take an event in which is in the middle of what  
13:33:02 15 they're trying to prove, and they push it forward as if it  
13:33:05 16 means the same thing at the same time, that's the accordion.

13:33:09 17 So you get to hear an exchange not that day,  
13:33:18 18 earlier day, later day, and there is a guy named Q, earlier  
13:33:23 19 in 2018 you hear a man named Frankie. What didn't you hear?  
13:33:28 20 You didn't see in those exchanges that they want you to  
13:33:31 21 focus on versus the time that is important any reference to  
13:33:35 22 a Bernard, any reference to a Mookie. In retrospect, this  
13:33:43 23 was not the best way as even Mr. Wise said to put Hallie  
13:33:46 24 off, yes, he could have written I'm in D.C. instead of DE  
13:33:50 25 and he writes New Castle. When he wrote that in the midst



13:33:53 1 of their relationship, he wasn't thinking that five years  
13:33:56 2 later he would be sitting in a courtroom trying to explain  
13:33:59 3 the way they talked to each other.

13:34:02 4 Then they tried to show that they had proof  
13:34:07 5 beyond a reasonable doubt with testimony by FBI agent Jason  
13:34:12 6 Brewer about that leather pouch. I told you when we first  
13:34:16 7 met that that was going to be what they were going to try to  
13:34:19 8 do. Another watch this hand, I'm holding the pouch, don't  
13:34:26 9 look at this hand as to what that pouch means.

13:34:31 10 So what do we know about that? First Hallie  
13:34:34 11 said she found it in the truck, yet we know Hunter and her  
13:34:38 12 pouches or his pouches often were in her house as she said.  
13:34:43 13 We know she was looking around for what to do with a gun and  
13:34:46 14 the other things that she found. And that she went into the  
13:34:49 15 house to find a bag. We know that Hunter did not get the  
13:34:53 16 truck back until he got it in New York, and of course it's  
13:34:57 17 possible, there is suspicion or conjecture, that some time  
13:35:02 18 then and sometime on the 23rd that's when that pouch got  
13:35:06 19 into the truck. No evidence of that. It's just her word  
13:35:11 20 that that's what she found it.

13:35:13 21 But most importantly, no one can say anything  
13:35:17 22 about this exhibit that actually counts. Right? Except  
13:35:22 23 that five years after it was taken, by the Delaware State  
13:35:27 24 Police, and stayed in some fashion until after the charges  
13:35:31 25 in this case were filed, the prosecutors then decided to

13:35:34 1 have it tested, and when they did, they did not find finger  
13:35:41 2 prints. But what did they find? They found that trace that  
13:35:45 3 the chemist, Mr. Brewer said very small amounts which he had  
13:35:52 4 it combined. But what did he not show you? Just remember,  
13:35:54 5 the proof beyond reasonable doubt is not on us, it is a  
13:36:00 6 suggestion they make and what do you now know about that  
13:36:03 7 pouch? You don't know when any residue was put there. You  
13:36:06 8 don't know by whom. You don't know where it was at the  
13:36:11 9 time. You don't know if there was that residue, whether  
13:36:15 10 Hunter put it there, Hallie put it there, or anybody else  
13:36:18 11 they were with. It's a big piece of evidence to them, but  
13:36:21 12 when you actually think about it, doesn't it actually point  
13:36:24 13 out the problem with suspicion or conjecture?

13:36:31 14 And Judge Noreika said during the trial, you  
13:36:34 15 heard testimony of witnesses and argument by counsel, that  
13:36:37 16 the government did not use specific investigative  
13:36:42 17 techniques. She told you very specifically, especially when  
13:36:45 18 they want to make something of that pouch that you may  
13:36:48 19 consider these facts in deciding whether the government has  
13:36:51 20 met its burden of proof.

13:36:52 21 So how else did the prosecutors try to meet this  
13:36:57 22 heavy burden? By calling witnesses who often did no more  
13:37:01 23 than to again confirm what Hunter admitted. When I told you  
13:37:06 24 he would not be contesting his use in other times, but they  
13:37:12 25 spent time doing it anyway. They subpoenaed his ex-wife to

13:37:16 1 tell you about his past alcoholism and drug use in 2015 and  
13:37:21 2 2016, and a vague reference that she would find  
13:37:26 3 paraphernalia in a car or a truck without my asking which  
13:37:30 4 one and when, she didn't know that. But what you do know  
13:37:34 5 was by this period in 2018, they were not together. I think  
13:37:39 6 she even confirmed to me that their contact was other than  
13:37:43 7 being together. And she certainly didn't see him using any  
13:37:46 8 drugs in that period. But they called her anyway.

13:37:49 9           There was no actual witness to the drug use in  
13:37:53 10 this period of time, but again, Agent Jensen, who is sat at  
13:37:58 11 table and you see her now, but did not get assigned to this  
13:38:01 12 case she said until the fall of 2023, and could compile her  
13:38:06 13 text charts, which again if you look at them carefully have  
13:38:10 14 distinct differences between what you can show in the  
13:38:13 15 earlier years and what you can show when it counts. So many  
13:38:18 16 texts about real drug use, versus I am on the top of the my  
13:38:25 17 car smoking crack. And again, when you get the  
13:38:30 18 instructions, I want you to remember that proof beyond  
13:38:33 19 reasonable doubt is not allowed to be arrived with suspicion  
13:38:37 20 or conjecture.

13:38:39 21           And then there was the so-called evidence of DEA  
13:38:44 22 agent Joshua Romig. Again, watch this hand, pay no  
13:38:51 23 attention to that one. He can tell you as he did where does  
13:38:55 24 cocaine come from, he can tell you how it was made, he can  
13:38:58 25 tell you how it's distributed, he can tell you how much it

13:39:02 1 could cost in any period of time, he could tell you that his  
13:39:06 2 job is to go after large distributors to prevent drugs from  
13:39:10 3 being sold, when this case is about a single user. And then  
13:39:14 4 he could tell you about drug lingo and how Hunter used that  
13:39:18 5 lingo in various years. But the more he told you about  
13:39:22 6 that, again, it should have emphasized what's different.  
13:39:27 7 The lack of proof beyond reasonable doubt because of that  
13:39:33 8 stubborn fact that comes up time and time again, that this  
13:39:38 9 lingo that they spent so much time to go over with you was  
13:39:43 10 in 2016 or '17 or '18, whether they're talking about his  
13:39:48 11 book, or the texts. And in the period where he was telling  
13:39:53 12 you about this lingo, do you recall what I had him do? Go  
13:39:57 13 through every one of the texts in which he was trying to  
13:40:02 14 condense the time period and confirm that no such lingo  
13:40:07 15 existed at that time.

13:40:09 16           So the next thing they did when they saw me  
13:40:15 17 doing that was to ask agent Romig when they came back up,  
13:40:20 18 was use of cash, and do you remember his word, inference of  
13:40:24 19 drug use. Of course it is. They wanted to leave that off  
13:40:30 20 right there, but then I had agent Romig point out the  
13:40:37 21 obvious, that cash or debit withdrawals are also to be used  
13:40:42 22 for as the witness said, especially for other purposes if  
13:40:47 23 there is no operative credit card at the time. If you  
13:40:51 24 remember the back and forth with me and with agent Romig  
13:40:54 25 after they left off with doesn't cash show drugs, this is

13:40:58 1 what it was. Is large withdrawals of cash on any day that  
13:41:01 2 is in the amounts they said used for things other than  
13:41:04 3 drugs? The agent said it absolutely can be.

13:41:08 4 Can it be used to give your family cash to pay  
13:41:10 5 for their expenses or living? Expert Romig, absolutely.  
13:41:15 6 Can it be used to purchase goods if you don't have a usable  
13:41:18 7 credit card at the time? Absolutely. Can it be used to pay  
13:41:22 8 for the place you checked in for rehab if they'll take it  
13:41:26 9 that way? Yes, as far as I know. Can it be used for a  
13:41:31 10 person's living expenses themselves to pay for their rent,  
13:41:34 11 their groceries, or anything? Yes, it can.

13:41:37 12 Proof beyond reasonable doubt is not making a  
13:41:43 13 suggestion that is suspicion or conjecture and then hope  
13:41:46 14 that you won't see the difference. Of course he used cash  
13:41:49 15 when he bought drugs, but all those amounts that were in  
13:41:53 16 each year or each month or each time, is that what they're  
13:41:57 17 trying to say that a \$10,000 withdraw on a day is for drugs?  
13:42:03 18 These are serious charges that will change Hunter's life,  
13:42:07 19 but when the prosecutor wants to make their case beyond  
13:42:11 20 reasonable doubt by pointing to a pouch that says nothing,  
13:42:14 21 texts from prior years or later months, which highlight  
13:42:17 22 what's not there in the operative time, witnesses who are  
13:42:20 23 given immunity for their conduct, and then something called  
13:42:24 24 an inference that cash means drugs, your job as sworn jurors  
13:42:31 25 is to declare that that is not the definition of proof

13:42:34 1 beyond reasonable doubt.

13:42:36 2 What did you hear about Hunter's addiction in  
13:42:39 3 those years? By the time of early 2018, by his own words,  
13:42:44 4 he was smoking crack as often as 20 minutes, every  
13:42:48 5 20 minutes. He had literally fled the East Coast as you  
13:42:52 6 remember. Do you remember the word he used, to disappear.  
13:42:57 7 To get away from things in D.C. or in Delaware.

13:43:01 8 He did not see his family until one of them  
13:43:05 9 visited, or two of them visited in that fall at the end of  
13:43:10 10 the summer of 2018.

13:43:13 11 Did you see or hear anything about the type of  
13:43:17 12 that 20-minute use in terms of his ability to have "self  
13:43:22 13 control" in that instruction when he came back from Los  
13:43:26 14 Angeles. When did you hear what -- and then you did hear  
13:43:30 15 that he was doing things totally inconsistent with that  
13:43:34 16 previous habit that they played for you in his book, and  
13:43:37 17 that people testified about him sneaking off and being  
13:43:42 18 unavailable, but what did you hear in that period of time?  
13:43:44 19 He returned to Delaware who help Hallie with her recovery.  
13:43:48 20 He spent him with his family. Had not done that for more  
13:43:52 21 than half a year. He did not sit in a car missing  
13:43:56 22 airplanes. He was able to pack and get out. Those were not  
13:44:00 23 by comparison the actions of a person who believed knowingly  
13:44:05 24 that he was what the law forbids him to be. Or a form asks  
13:44:11 25 him if he is. The evidence you did see in this period is



13:44:17 1 what I said when we met, kicking crack cocaine is hard.  
13:44:21 2 Kicking alcohol, much harder. Even after The View, he ended  
13:44:27 3 up drinking, but drinking alcohol while buying or possessing  
13:44:32 4 a gun is not the charge, it's not against the law.

13:44:36 5 Mr. Wise said and asked you to look at  
13:44:40 6 references to the word sober, to his phrase "I relapsed", as  
13:44:45 7 if that meant drugs. Conjecture and suspicion. But what do  
13:44:52 8 you have in evidence in that period of time we're talking  
13:44:55 9 about? This is what you have. You have all of his bank  
13:44:59 10 records, the government's exhibit, on October 1st,  
13:45:04 11 October 6th, October 17th, October 18th, October 19th,  
13:45:09 12 October 21st, October 24th, and October 30th. You may have  
13:45:13 13 a text that they want to say means that he was meeting  
13:45:16 14 somebody at 7-Eleven without a location data, okay,  
13:45:19 15 conjecture and suspicion, but what you do have is what he  
13:45:23 16 was doing and what he met when he uses the word sober. When  
13:45:26 17 he says I relapsed, and that is real evidence.

13:45:30 18 Let's turn to the gun sale. Let me turn to the  
13:45:36 19 day of October 12th. And the total lack of proof let alone  
13:45:41 20 beyond reasonable doubt that on that day Hunter to use the  
13:45:45 21 expression in the charge "knowingly" and with intent to  
13:45:48 22 deceive was lying on a form asking him in the present tense  
13:45:55 23 if he was a user or an addict. Now you know what I said in  
13:45:59 24 opening I think, on October 12th, Hunter was shopping for a  
13:46:03 25 new phone. This is government Exhibit 24. It is date dated

13:46:07 1 as a status change history, and its time is October 12th of  
13:46:12 2 2018.

13:46:12 3 You see that status change history on the 12th.  
13:46:17 4 And then you'll remember that Mr. Cleveland identified that  
13:46:21 5 AT&T store was just across the parking lot from StarQuest  
13:46:27 6 Shooters and Supply. And across that parking lot from the  
13:46:32 7 AT&T store was StarQuest Shooters. And then you saw at some  
13:46:40 8 point Hunter went inside. And this is what he saw when he  
13:46:43 9 did. Given what the evidence the government had but didn't  
13:46:48 10 show you about the AT&T store, was he going that day to the  
13:46:53 11 shopping center to buy a gun? And what you also saw was the  
13:47:03 12 actual sales slip of that day. What is on that sales slip?  
13:47:06 13 Yes, there is the gun, yes, there is the bullets, yes there  
13:47:10 14 is a speed loader, but you'll see there is also a  
13:47:14 15 flashlight, that utility tool, and a BB gun.

13:47:19 16 And you were asked a moment ago to use your  
13:47:22 17 common sense. Of course that's what you will bring into  
13:47:25 18 your deliberations. So you see all of those, and then you  
13:47:30 19 have to you figure out how actually it occurred that day.  
13:47:33 20 Mr. Cleveland is a great guy, he's a wonderful salesman, he  
13:47:38 21 is as he and others said "the whale hunter". But I think  
13:47:41 22 the evidence shows that the more likely sequence of events  
13:47:45 23 is what I suggested in opening it would be. A person does  
13:47:48 24 not go in, take the time, bought the choices, hear him out,  
13:47:54 25 hear about guns, buy the bullets, explains about them, hears

13:47:58 1 something about a speed loader that he never knew before and  
13:48:02 2 asks about that, discusses a lock box, and then says by the  
13:48:05 3 way, I want to throw in a BB gun across the room on a  
13:48:09 4 different shelf, and only after I had decided to buy the  
13:48:12 5 other things.

13:48:13 6 Look, I don't know the actual sequence, but I  
13:48:16 7 can suggest to you to look at the evidence and figure out  
13:48:18 8 why that is the case. Why does it matter? Not because  
13:48:24 9 Gordon Cleveland does not remember it correctly, why would  
13:48:28 10 he five years later remember whether Hunter went into the  
13:48:31 11 store and was killing time and looked to see if there was  
13:48:34 12 something that he might like, why would he, he wouldn't.  
13:48:37 13 But it does reflect on whether or not Hunter had the  
13:48:41 14 necessary intent on the government's charges against him.  
13:48:46 15 Let alone whether he went in with the intent to buy a gun  
13:48:51 16 knowing that he was not somebody who was allowed to do so.

13:48:54 17 And what I just said the sequence is, again, not  
13:48:58 18 using suspicion or conjecture makes sense from what you have  
13:49:03 19 in real evidence. You saw the background check's time. If  
13:49:08 20 you remember, it was 6:36. And you remember that the sale  
13:49:13 21 of all those items with what was discussed with him,  
13:49:16 22 explained to him about guns and speed loaders and bullets  
13:49:20 23 and all the rest happened in that 16-minute period,  
13:49:23 24 according, if that's the way the prosecutors want to suggest  
13:49:26 25 it occurred.

13:49:27 1 I think the natural inference is it's not the  
13:49:31 2 way it happened.

13:49:32 3 And you also know this anyway because  
13:49:36 4 Mr. Cleveland confirmed that between him and Hunter, Hunter  
13:49:40 5 did not know about guns, bullets, loaders, and the like.  
13:49:45 6 And if you remember my question to him, it went like this.  
13:49:50 7 When you and he were talking, you have behind the store as  
13:49:53 8 we saw it, a display of guns? And he said yes. I said did  
13:49:57 9 he know which ones were which? He said no, that's why I had  
13:50:04 10 to explain it to him. Yes, I explained it to him: So when  
13:50:08 11 he came in, he didn't say I want a Colt, he didn't say I  
13:50:11 12 want a whatever, you're saying he was interested in a  
13:50:13 13 handgun? Answer yes. But to be clear, you're the one who  
13:50:17 14 explained the various hand guns. Yes, I did. So I asked,  
13:50:21 15 when he came in, did he appear to you to be somebody who  
13:50:24 16 would even know the difference between a hollow tip bullet  
13:50:28 17 and something called a full metal jacket. And he said no,  
13:50:31 18 that's why I explained it to him.

13:50:33 19 When he came in the store, did he look like  
13:50:36 20 somebody who would even know what a speed loader was?

13:50:40 21 Answer: No.

13:50:41 22 Did you explain that to him as well?

13:50:44 23 Answer: Yes.

13:50:46 24 Then what do we know for sure, surely at some  
13:50:50 25 point Hunter was given that 4473 form, but when and by whom

13:50:54 1 is not clear at all. And then the issue came up about the  
13:50:59 2 ID. Gordon Cleveland said he got the passport and he needed  
13:51:03 3 to check it with Mr. Palimere or Mr. Turner. He said,  
13:51:08 4 Mr. Turner said, "we would need for the passport another  
13:51:11 5 form of like identification stating his address." Because  
13:51:15 6 you can see on the last page of the exhibit that that is  
13:51:19 7 what was there. That the passport that was attached to the  
13:51:25 8 form, as all passports, don't have the residence address.  
13:51:31 9 Mr. Cleveland then said it was Jason Turner who talked with  
13:51:34 10 Hunter and I asked, did you see him, meaning Mr. Turner talk  
13:51:40 11 -- I asked Mr. Turner, did you see him talk to Mr. Turner at  
13:51:43 12 that point, Mr. Cleveland said yes. But then we called  
13:51:49 13 Jason Turner. And I said as between you and Mr. Cleveland  
13:51:53 14 who was having interactions with Mr. Biden. And Mr. Turner  
13:51:57 15 said Mr. Cleveland. And then Mr. Cleveland said that when  
13:52:01 16 he was back in the room, only Jason Turner was there. But  
13:52:06 17 then Mr. Turner said when Mr. Cleveland came back into the  
13:52:10 18 office, that Ron Palimere was there as well, and that's what  
13:52:14 19 Ron Palimere said as well. And you saw on the government's  
13:52:19 20 exhibit that passport that was written in by Mr. Turner on  
13:52:24 21 lines 18 and line 18, and you saw and I asked whether or not  
13:52:29 22 given this exchange about what was happening that day was  
13:52:32 23 any other form of ID presented? And if so, where would you  
13:52:36 24 find it? And you saw A did not. You remember in opening,  
13:52:42 25 there was this form with instructions and it made very clear

13:52:45 1 the transferor/buyers must provide a valid government issued  
13:52:53 2 photo identification, document to the transferor that  
13:52:53 3 contains the transferors/buyers name, residence address, and  
13:52:56 4 date of birth, and that's what I asked them about. Mr. Wise  
13:53:02 5 said that's irrelevant. Why is that important for you to  
13:53:07 6 try to put together when you're figuring out what happened,  
13:53:10 7 why, and what Hunter's intent was? Because Judge Noreika  
13:53:15 8 has explained that question, that issue of materiality. And  
13:53:19 9 she gave you the instruction on materiality, which would  
13:53:24 10 reasonably be expected to be of concern to a reasonable and  
13:53:27 11 prudent person in connection with the sale of the firearm.  
13:53:30 12 Who is selling the firearm that day? The folks at StarQuest  
13:53:34 13 Shooters.

13:53:35 14 So then ask yourself how material was any of  
13:53:39 15 what you heard them say on that form because you heard that  
13:53:43 16 both Mr. Cleveland and Mr. Palimere said that Ron Palimere  
13:53:47 17 wanted to get the sale done quickly once they knew who  
13:53:51 18 Hunter was.

13:53:52 19 And Hunter did check the boxes and he did sign  
13:53:56 20 the form, but when was that? Mr. Turner said that the gun  
13:54:00 21 came into the back room with the paperwork, Mr. Cleveland  
13:54:03 22 said that did not happen. In addition, Mr. Turner said that  
13:54:07 23 when he got the form and the boxes were checked, Hunter had  
13:54:10 24 not yet signed the form.

13:54:11 25 Mr. Cleveland did not say that's the way it



13:54:14 1 occurred. And again, I raise these things because you have  
13:54:18 2 to decide whether that materiality issue has been satisfied  
13:54:26 3 beyond a reasonable doubt.

13:54:26 4 Now to determine if Hunter was knowingly and  
13:54:28 5 intentionally lying on the form with any intent to deceive,  
13:54:31 6 you have to look at the form again. So let's do that. And  
13:54:34 7 you didn't need me and Mr. Cleveland to tell you what is  
13:54:37 8 undisputed. There are 13 questions, which carefully ask a  
13:54:42 9 buyer and Hunter that day whether he fit into certain  
13:54:46 10 categories. And you know now, right, that some ask in the  
13:54:50 11 present tense, are you, and you know many ask in the past  
13:54:55 12 tense, have you ever. And the all important question 11E  
13:55:01 13 that Mr. Wise put up again, that's one of the are you's.  
13:55:08 14 When the form wants to ask somebody buying a gun, the  
13:55:11 15 question is have you ever used, have you ever been an  
13:55:16 16 illegal alien, have you ever had a domestic order against  
13:55:21 17 you, that form knows how to ask that question. And you also  
13:55:25 18 know that the form has lots of instructions and lots of  
13:55:28 19 definitions. And you remember here what Mr. Cleveland said  
13:55:33 20 when I asked him or the government's lawyers asked him  
13:55:36 21 whether or not how Hunter filled out the form. This is what  
13:55:39 22 he said. "In your testimony you observed Mr. Biden looking  
13:55:41 23 at the form, you told him to take his time." Answer: "Yes:  
13:55:46 24 And you remember that, right?

13:55:47 25 And I asked, the form has multiple pages to

13:55:52 1 look, right? And what did he say. "Yes."

13:55:55 2 So what does that mean? What you know it means  
13:55:59 3 is that there are definitions for questions 11A, question  
13:56:03 4 11B, question 11C, question 11D, question 11F, question 11G,  
13:56:10 5 question 11H, question 11I, 12D, 13 and on and on, but what  
13:56:18 6 is undisputed, not conjecture, not suspicion, but actual  
13:56:22 7 evidence. There is no definition for what 11E asks. It  
13:56:28 8 just skips from F to G -- I'm sorry, D to F.

13:56:33 9 So Hunter, who had returned from The View, where  
13:56:36 10 he saw his daughter and his future son-in-law, and who came  
13:56:41 11 back on the day he did to be with Hallie when she was doing  
13:56:45 12 to her own rehab, now was engaging with his family, which he  
13:56:51 13 did not do in his worse drug periods. What would he see, a  
13:56:55 14 question not in the past tense, but in the present tense  
13:57:00 15 are, and with all you heard about those periods of sobriety  
13:57:03 16 and periods of rehab, Hunter's form said no.

13:57:08 17 Remember that instruction I read to you earlier  
13:57:12 18 that what these knowingly and with intent to deceive  
13:57:15 19 requirements are, that they need to prove beyond reasonable  
13:57:19 20 doubt. And as I suggested when we first met, this does not  
13:57:24 21 mean what Hunter thinks about himself in 2024, what he wrote  
13:57:28 22 about in 2020 or 2021, when he was writing a retrospective  
13:57:34 23 about his time, or what the prosecutors think of him, it  
13:57:38 24 means what he thought on those key days in October of 2018.  
13:57:46 25 And Mr. Wise talked about Gordon Cleveland again, and when

13:57:51 1 he did that, I just thought of something. You know  
13:57:54 2 something else that Mr. Cleveland told us? He was the  
13:57:58 3 person who spent the most time with Hunter that day, close  
13:58:02 4 up. He said he was careful who he would sell guns to. He  
13:58:07 5 would even deny a sale to someone who he thought was an  
13:58:10 6 alcoholic. Even if he thought so strangely in the law, that  
13:58:17 7 he could do so because that is not forbidden in the law here  
13:58:21 8 or in the form.

13:58:23 9 And as we pointed out, the form doesn't ask  
13:58:26 10 about it or forbid it.

13:58:28 11 Why is it important? You can conjecture about  
13:58:34 12 what Hunter was doing, that's conjecture. But you have a  
13:58:37 13 person who actually saw him on the day of the sale on the  
13:58:41 14 morning on -- or the afternoon where it happened, who spent  
13:58:44 15 lots of time with him explaining all those things, who said  
13:58:48 16 that's real evidence. And what did he say? I asked. And  
13:58:52 17 you don't want to sell a gun, I imagine, to somebody you  
13:58:56 18 know to be either high or drunk or using a drug or alcohol,  
13:59:00 19 right, Mr. Cleveland said no. Is it your practice to try to  
13:59:04 20 understand or glean or observe a person? Mr. Cleveland said  
13:59:07 21 yes. And as I understand it, your practice would be that  
13:59:09 22 you would try to see whether somebody is glassy eyed, right?

13:59:13 23 THE WITNESS: Yes. Or smells of alcohol. Yes.  
13:59:17 24 Or smells ever marijuana. Yes. Or any other indication of  
13:59:20 25 a person not being in their normal sober condition.

13:59:25 1 Mr. Cleveland said yes.

13:59:27 2 And then finally in terms of what you know,  
13:59:32 3 their high burden and what will make sense given how they  
13:59:36 4 describe how Hunter is when he uses drugs, when he was using  
13:59:40 5 drugs, this is what he said. And on that day Mr. Biden did  
13:59:44 6 not exhibit any of the things you try observe? And he said  
13:59:47 7 not at all.

13:59:51 8 Look, it has to be clear from what you heard  
13:59:54 9 from Mr. Cleveland and what you see in the form and what you  
13:59:57 10 see in the back and forth, that neither Mr. Cleveland nor  
14:00:02 11 Hunter were anywhere near trying to deceive each other. So  
14:00:05 12 even when you heard the evidence about Hunter's constant use  
14:00:09 13 of alcohol or saw pictures where he's doing that, in this  
14:00:13 14 case using alcohol as you saw real evidence of those days in  
14:00:19 15 October does not forbid him from doing what he is accused of  
14:00:23 16 in this case.

14:00:25 17 Odd, but the fact.

14:00:28 18 Let's talk about possession. So what Hunter did  
14:00:31 19 do with the gun, what did he do after he bought the gun?  
14:00:35 20 This is what Mr. Cleveland said about how it left the store.  
14:00:39 21 It came with its own lock box, do you remember that, again a  
14:00:42 22 piece of evidence I had to submit to you because the  
14:00:44 23 government didn't do it when they were asking him questions.  
14:00:46 24 And that is what Mr. Cleveland said about this. I asked,  
14:00:51 25 and did you see the lock that you were just talking about

14:00:54 1 has the same name Colt on it? "Yes." It comes with a box?  
14:00:58 2 Answer. "Yes." Inside? "Yes." And then I said and then  
14:01:02 3 it gets put on the outside? "Yes."

14:01:05 4 And after Mr. Biden left the store with the  
14:01:07 5 material that he had purchased and the gun was in the lock  
14:01:10 6 box, correct.

14:01:11 7 Answer: "Yes."

14:01:14 8 Mr. Wise said and I'm quoting him there is no  
14:01:20 9 evidence this gun was, "not in Hunter's possession." But  
14:01:26 10 again, it's their burden of proof, not Hunter's, to fill in  
14:01:32 11 a gap as to what happened between October 12th and  
14:01:37 12 October 23rd when we know the gun existed. There is no  
14:01:41 13 evidence in the record, I don't know that the gun was ever  
14:01:46 14 loaded, the speed loader had any bullets in it, we know  
14:01:50 15 there was a box of bullet's, so where was that gun between  
14:01:54 16 the 12th and the 23rd when Hallie Biden found it. Did it  
14:01:58 17 even ever come out of that lock box between those two dates?  
14:02:03 18 When Hunter traveled in that period of time, whether it was  
14:02:06 19 to Philadelphia that the agent knew he would go to see one  
14:02:11 20 of his daughters, or New York where he saw Naomi, when bank  
14:02:15 21 records that you can look at say that he might have been in  
14:02:17 22 D.C. or any other place, where was it? You don't know.

14:02:28 23 In his argument to you then Mr. Wise talked  
14:02:32 24 about the exchange on the night of the 18th with his  
14:02:36 25 daughter Naomi in New York. Look at this, pay no attention

14:02:45 1 to that. Because if you look at what was said and you  
14:02:48 2 remember when Hunter got to New York and reached out to try  
14:02:52 3 to set up their meeting, and it turns out that a text is  
14:02:56 4 returned after Hunter calls at the 2 o'clock in the morning,  
14:03:02 5 you'll see that Naomi is involved in that exchange. He  
14:03:05 6 didn't wake her up.

14:03:08 7 When he says that is Mr. Wise, pointing you to  
14:03:13 8 one text that says, "I can't take this", conjecture and  
14:03:21 9 suspicion does not make for reasonable doubt. What does  
14:03:24 10 that mean? Did you remember what she said, she was  
14:03:28 11 unavailable, she was in Brooklyn in court, in that text.  
14:03:32 12 Could it mean that she was mad at him because she felt like  
14:03:36 13 he was doing something with somebody he shouldn't have. Did  
14:03:40 14 it mean something else? That's how they fill in the gaps  
14:03:45 15 when they don't have proof.

14:03:46 16 As I indicated in my opening statement, there is  
14:03:48 17 no evidence from that day he bought the gun to the day that  
14:03:52 18 Hallie threw it out that the gun was anywhere but in its  
14:03:56 19 lock box. And then what do you know? On October 23rd,  
14:04:03 20 Hallie did something incredibly stupid, and she may have  
14:04:07 21 done it for love or she may have done it in my exchange with  
14:04:10 22 her because she's always concerned where is Hunter and if  
14:04:15 23 he's with somebody else. We know that around 11:15 in the  
14:04:18 24 morning, she said she went to the truck and found the  
14:04:20 25 StarQuest gun and bullets and speed loader. She was the one



14:04:24 1 to decide to then take it out of that safe in the middle of  
14:04:27 2 the car and put it in a bag and take the bag and actually  
14:04:31 3 throw it in an open trash can at Janssen's market. Hunter  
14:04:38 4 didn't do that.

14:04:39 5 And one more thing. Hallie said that the safe  
14:04:42 6 was not working. I'm not sure why she would remember that,  
14:04:46 7 she could, she might. As opposed to all the specifics about  
14:04:49 8 the dusting or where else everything was including the  
14:04:53 9 pouch. And you heard Naomi said that when she left the  
14:04:57 10 truck with her dad, that safe was working. The combination  
14:05:02 11 was locked. So the prosecutors I guess want you think that  
14:05:06 12 somehow got the truck, busted the safe, and that when Hallie  
14:05:11 13 got to it, rather than either getting in because she knows  
14:05:16 14 the combination or she has her own keys to the truck, that's  
14:05:20 15 conjecture and suspicion.

14:05:22 16 And then we saw in the government's exhibit, a  
14:05:25 17 video that it's 11:20 that she goes to the store and threw  
14:05:29 18 the bag out into the trash. And you saw the texts that at  
14:05:34 19 11:45, Hunter is in his truck and he where is the following:  
14:05:42 20 "Did you take that from me Hallie? Are you insane. Tell me  
14:05:47 21 now. This is no game and you're being totally irresponsible  
14:05:50 22 and unhinged."

14:05:52 23 Ms. Biden confirmed what I said to you in  
14:05:57 24 opening about Hunter told her what to do next. To go back  
14:06:01 25 into the store or go back and find the gun that she had so

14:06:05 1 dangerously thrown out. And he texted her and then called  
14:06:09 2 her, as she reported, a minute later. You know, a person  
14:06:14 3 who is as the government wants to suggest he was in that  
14:06:17 4 period of time, who is using drugs, can't operate, is a,  
14:06:25 5 "danger to the public safety", is the very person who as you  
14:06:29 6 heard in a minute later when Hallie Biden told him the gun  
14:06:34 7 was gone, what did he say? He said "go inside and get the  
14:06:41 8 police."

14:06:42 9 And then you saw in the video her of going from  
14:06:47 10 trash to trash to find and surely she was continuously  
14:06:52 11 freaked out. But Ms. Biden confirmed as she said she would  
14:06:56 12 that Hunter called her back and this is what she said he  
14:07:01 13 said. Then when you -- when we saw you get back into the  
14:07:05 14 car and then you called him to tell him I didn't find it,  
14:07:07 15 yes, and I think you said in that conversation he said to  
14:07:10 16 you go tell somebody, got to tell or make, I think to use  
14:07:16 17 your phrase, Ms. Biden, a police report.

14:07:20 18 Answer: Right.

14:07:21 19 Hallie then went back into the store as Hunter  
14:07:24 20 asked her to do, and the Janssen's store people called the  
14:07:28 21 police. And Delaware State troopers, Vincent Clemons and  
14:07:33 22 later Josuha Marley arrived. You heard that Trooper Clemons  
14:07:38 23 interviewed Hallie and asked her to ask Hunter to come as  
14:07:41 24 well. Hunter was 20 minutes away and did just that and also  
14:07:46 25 gave trooper Clemons a statement. And corporal Marley

14:07:49 1 confirmed the following: "He was the victim the entire  
14:07:54 2 time." And he also said, "Hunter's reaction to what has  
14:08:01 3 happened, don't file any charges against Hallie." Hunter  
14:08:05 4 and Hallie then left the store that day, certainly that day  
14:08:10 5 did not help their relationship. Neither of them. And you  
14:08:14 6 saw as I put on the screen the Best Western debit,  
14:08:18 7 indicating that on that day he was at the Best Western  
14:08:22 8 later. Already too late as to what she said his intention  
14:08:25 9 was was to get to Washington D.C. So from October 12th to  
14:08:29 10 the 23rd as to gun the prosecutors as I predicted present no  
14:08:35 11 evidence that it was ever loaded, carried around, been in  
14:08:41 12 public until Hallie did that, or ever used in any way. And  
14:08:45 13 then you heard how it all ended, that loveable man, Edward  
14:08:51 14 Banner, fishes for recyclables and came up with something  
14:08:54 15 more valuable than a soda can or a plastic bottle. And  
14:08:58 16 eventually, Delaware State Trooper Billy Greer tracked  
14:09:02 17 Mr. Banner down. Again what do you know, it was only Hallie  
14:09:07 18 Biden or Ed Banner who ever, ever took the gun in public.  
14:09:11 19 When Mr. Banner took officer Greer to the his to get the gun  
14:09:18 20 even though he didn't remember what box it was in or what  
14:09:22 21 box, he did remember he gave it to the police that day, and  
14:09:24 22 than as he said in opening he had a different gun in a box,  
14:09:28 23 which he was keeping for a friend whose brother was in some  
14:09:31 24 type of trouble, the police took both guns that day and  
14:09:33 25 that's what happened to him. On October 29th, the police

14:09:36 1 contacted Hunter again to tell him that they had recovered  
14:09:40 2 the gun and he told them he didn't want it back. And again,  
14:09:44 3 what do you remember the police officer saying. He again  
14:09:47 4 said, I don't want to press charges against Hallie, and I  
14:09:50 5 assume he meant Mr. Banner as well. So that's what happened  
14:09:54 6 between the time on that day that Corporal Marley wrote in  
14:09:57 7 his report that Hunter was the victim of a crime to where we  
14:10:01 8 are today.

14:10:01 9 That is the story about the gun that Hunter  
14:10:08 10 bought and which existed somewhere for that period of time  
14:10:11 11 where there is no evidence of when it came out of his own  
14:10:14 12 lock box or whether or not he had it in anyplace he  
14:10:18 13 traveled. That's the story about the two days. That's the  
14:10:21 14 story about the form with the words is or are, given to  
14:10:25 15 Hunter. That's the story about what people at StarQuest  
14:10:29 16 told him, or more importantly, for the charges in this case,  
14:10:32 17 what they didn't tell him. That's the story of what the  
14:10:35 18 form says, not about anything that that question 11E  
14:10:40 19 actually means. And that's the story of what people other  
14:10:44 20 than Hunter, Mr. Cleveland, Mr. Palimere, Mr. Turner, Hallie  
14:10:48 21 Biden, and Mr. Banner did.

14:10:50 22 If there is one thing that the prosecutors did  
14:10:54 23 that I think is most unfair as all is to take Hunter's words  
14:10:58 24 about being an addict out of the context in which they were  
14:11:02 25 spoken at the time. You know this, but even Zoe Kestan and

14:11:06 1 Hallie Biden also explained in the case that the prosecutors  
14:11:10 2 put on that a person was an addict in the past means they  
14:11:15 3 always refer to themselves as an addict for treatment, but  
14:11:19 4 not in the way the law asks about when the words say is, or  
14:11:24 5 are. When the prosecutors kept pointing to the times Hunter  
14:11:28 6 called himself an addict or a drunk, you now understand what  
14:11:32 7 that meant. It meant both that there were times he was and  
14:11:35 8 times he was not. But a person saying that in that context  
14:11:39 9 at an alcoholic's anonymous meeting, or a narcotic's  
14:11:43 10 anonymous meeting, or in a text about himself afterwards, or  
14:11:46 11 in a book is not the same as it means when you are  
14:11:51 12 understanding what he thought on a particular day at a  
14:11:54 13 particular time.

14:11:57 14 Hi, I'm Hunter. And I am an addict.

14:12:01 15 This is what was meant when after the stress of  
14:12:06 16 October 23rd when all that gun things occurred, the  
14:12:11 17 government showed you this. On October 3rd, a week later,  
14:12:16 18 with all that occurred, that's when he writes, "I'm a liar  
14:12:21 19 and a thief, and a blamer, and a user, and I'm delusional,  
14:12:24 20 and an addict unlike beyond and above all other addicts that  
14:12:28 21 you know, I've ruined every relationship I've ever  
14:12:32 22 cherished." Is Hunter saying he is an addict on the 23rd in  
14:12:36 23 the way the law requires, or is this what you do when you're  
14:12:40 24 going back and saying this is what I have been.

14:12:44 25 That's not an admission that the prosecutors

14:12:51 1 want it to be. It is a claim for what he had been, but in  
14:12:57 2 November, a cry for help with someone looking back, seven  
14:13:03 3 days, 10 days after the gun incident occurred. And you've  
14:13:09 4 already heard that there is a definition. The term addict  
14:13:14 5 means an individual who habitually uses and even dangers  
14:13:18 6 that public safety or welfare and lost the power of self  
14:13:22 7 control. I know the government argues that that applies to  
14:13:25 8 him, but applies equally to what he was not, because their  
14:13:29 9 proof about that is telling you to look at all those prior  
14:13:32 10 years, including his book and what happens after the events  
14:13:35 11 that matter in this case.

14:13:37 12 As I asked his former spouse Kathleen, and his  
14:13:44 13 friend, and his brother's widow, Hallie Biden, confirmed  
14:13:48 14 that there were many times when he was in periods of nonuse  
14:13:53 15 of alcohol and nonuse of drugs. And remember, I said that  
14:13:57 16 he had various times of being in rehab, and Mr. Wise wanted  
14:14:01 17 to point to that to show that he was out of control, as  
14:14:06 18 opposed to instigating and initiating a period that he was  
14:14:09 19 very much in control and not using.

14:14:12 20 And with the evidence you heard from these  
14:14:15 21 individuals, Kathleen Buhle and Ms. Biden. Kathleen told  
14:14:19 22 you about his rehabilitation, and this is what she said.  
14:14:23 23 "He was at crossroads treatment center. He was at an  
14:14:27 24 outpatient program at the University of Pennsylvania. He  
14:14:30 25 was at a treatment center in Sedona, Arizona. He was at The



14:14:34 1 View in Los Angeles, and later you heard he was in treatment  
14:14:38 2 at Newburyport, Massachusetts. You heard from Hallie tell  
14:14:42 3 you that Hunter's brother and her ex husband Beau died in  
14:14:46 4 2015. You heard Naomi tell you that "he seemed the clearest  
14:14:50 5 I had seen him since my uncle died". So that you can  
14:14:53 6 understand that Hunter might deal with those traumatic  
14:14:58 7 issues in his life, like the death of his brother in 2015,  
14:15:02 8 by succumbing to his escape to alcohol or drugs, but in all  
14:15:08 9 of his life periods, using and when he was not, Hunter lived  
14:15:11 10 that successful life I told you about. He was as Kathleen  
14:15:16 11 mentioned, and they met at the Jesuit Volunteer Corp in  
14:15:21 12 North West. He graduated law school, he was of counsel at  
14:15:23 13 that international law firm of Boies Schiller, and he  
14:15:27 14 started his business, Rosemont Seneca.

14:15:29 15 When I hope pointed out in opening why the  
14:15:33 16 evidence of his accomplishments, his periods of nonuse, and  
14:15:37 17 his recovery was important to you, why, because again, of  
14:15:42 18 that requirement that Hunter knowingly or intending to  
14:15:46 19 deceive violated the laws that you were told about, or  
14:15:49 20 believing when the form asks him whether he is or are,  
14:15:54 21 thought himself that way. As I also asked you to consider  
14:15:58 22 when I first met you, Hunter has not asked anyone to excuse  
14:16:02 23 or forgive him for his mistakes, in using alcohol or drugs,  
14:16:06 24 to dull the pain that he felt. In fact, the prosecutors  
14:16:10 25 actually played for you his telling you that story, and you

14:16:13 1 heard it in his own voice in the book that you heard. And  
14:16:17 2 remember what Agent Jensen said about how they picked out  
14:16:20 3 what they played for you in court. They were not looking  
14:16:23 4 for the whole story she said, the focus was on excerpts that  
14:16:28 5 evidence addiction, and the use of narcotics.

14:16:32 6 Do you recall they spent 40 minutes on 2016 and  
14:16:36 7 2017. They spent 20 minutes plus on the first half of 2018.  
14:16:42 8 And then some minutes following in 2019. But did you hear  
14:16:47 9 even a minute about any of the events that happened in this  
14:16:51 10 period of time in 2018, when he came back from Los Angeles  
14:16:57 11 to be back home?

14:16:59 12 But even then, I think you can understand what  
14:17:02 13 Hunter was saying when you heard this.

14:17:10 14 (Government Exhibit 20(h) audio book played.)

14:17:37 15 MR. LOWELL: Shame and guilt, how far he's come.  
14:17:58 16 And then you remember the next thing he said.

14:18:03 17 (Government Exhibit 20(l) audio played. )

14:18:12 18 MR. LOWELL: So you heard that it was Uncle  
14:18:16 19 Jimmy that found The View in the summer of 2018. In total  
14:18:21 20 of the case, what do you know about this. You saw the  
14:18:23 21 government's exhibit, which talked about how much it costs a  
14:18:25 22 day of \$2,500. And I asked Agent Jensen, who told you that  
14:18:32 23 he was at The View for 12 days, and then you know that  
14:18:36 24 Hunter paid for many of these days from his own funds. And  
14:18:41 25 then Agent Jensen told you that it was also for services

14:18:44 1 that were provided by something called the sober companion  
14:18:48 2 between the dates of August 27th and the second. And you  
14:18:52 3 saw that he paid for those as well in the forms and in the  
14:18:58 4 bank records you saw.

14:18:59 5 Agent Jensen also told you that Hunter rented a  
14:19:03 6 house in Malibu, where you heard people visited him. Now  
14:19:07 7 let me show you what the prosecutors might have suggested  
14:19:10 8 were for different things. You saw that there were large  
14:19:14 9 withdrawals on September 13th, \$14,000, September 27th,  
14:19:22 10 \$10,000, in their form, in their chart, in their summary,  
14:19:27 11 they put that there. Drugs? Or for the Malibu house that  
14:19:32 12 he rented when he was with his sober companion? And for the  
14:19:38 13 many years, and again, I'm sorry, you have to decide what  
14:19:42 14 the actual evidence suggests, not a calendar with all the  
14:19:47 15 amounts of money that you have no idea whether it paid for  
14:19:50 16 rent or what Agent Romig agreed when I asked him it could be  
14:19:57 17 paid for. For the many years and the number of people the  
14:20:01 18 prosecutors worked with on the case, do you remember what I  
14:20:03 19 asked, because I wanted to get to the real proof, I did want  
14:20:06 20 there to be suspicion and conjecture, I asked Agent Jensen  
14:20:10 21 when I asked her about The View and the invoices and the  
14:20:13 22 bank withdrawals and this is what we said to each other.  
14:20:15 23 When you were pointing out, for example the issues of the  
14:20:18 24 bank account and the \$5,000 here and the other amounts that  
14:20:21 25 you talked with Mr. Hines about and other amounts of

14:20:25 1 thousands of dollars, did you match up those withdrawals?  
14:20:30 2 Answer. "No." And when I asked how about the Malibu house  
14:20:34 3 that he rented, did you try to find out what that house was,  
14:20:38 4 how much it cost per month, and whether any of those  
14:20:40 5 withdrawals and payments of cash matched that? She  
14:20:43 6 indicated that she had not. Because just like in the  
14:20:47 7 excerpts from the book, they were looking only for the  
14:20:52 8 excerpts that basically supported their conjecture and  
14:20:55 9 suspicions.

14:20:57 10 The prosecutors told you that they were not  
14:21:00 11 charging Hunter because of his use of drugs, or past  
14:21:03 12 addictions, but honestly, at so many times in this trial,  
14:21:08 13 didn't that seem exactly what they were doing? And so Judge  
14:21:14 14 Noreika read you the following instruction. You are here  
14:21:18 15 only to determine whether the defendant is guilty or not  
14:21:20 16 guilty of the charges in this indictment. The defendant is  
14:21:24 17 not on trial for any conduct or offense not charged in the  
14:21:29 18 indictment.

14:21:29 19 Ladies and gentlemen, I don't know how you come  
14:21:35 20 into the courthouse every day. If you come in from the  
14:21:39 21 front, right outside is a monument of our nations Bill of  
14:21:44 22 Rights. Those rights are what are at stake in this case.  
14:21:47 23 They define Hunter's right to a fair trial. Or the  
14:21:51 24 responsibility as you jurors have as being the judges of the  
14:21:56 25 fact. They are the basis for what Judge Noreika has

14:22:00 1 instructed you and will instruct you again in a bit. Those  
14:22:03 2 rights are where you, the jury get this enormous power, the  
14:22:07 3 most we can have in our system to judge another person and  
14:22:10 4 determine their life. But as I said, that power comes from  
14:22:13 5 tremendous responsibility, whether you thought it was going  
14:22:16 6 to happen or not, and I don't know what you think back a  
14:22:19 7 week ago, you were the ones who because you said that you  
14:22:23 8 would be fair and impartial were chosen to do just that.  
14:22:27 9 And those rights that are on that monument, and the rules  
14:22:32 10 that Judge Noreika has given you, are the ones that provide  
14:22:36 11 you the road map for doing the job you swore you would do.

14:22:41 12 Those rights and rules require each and every  
14:22:44 13 one of you to hold Hunter's presumption of innocence until  
14:22:49 14 the evidence shows each and every one of you individually  
14:22:52 15 that they have met that burden of proof beyond reasonable  
14:22:56 16 doubt.

14:22:56 17 So let me go back to these one last time. In  
14:22:59 18 opening Judge Noreika gave you some and she did again and  
14:23:03 19 she will in a bit. Remember, the indictment is not  
14:23:07 20 evidence. You heard that numerous times and you know that  
14:23:10 21 indictments are written by prosecutors without the  
14:23:13 22 involvement of either Hunter or his lawyers.

14:23:15 23 And on our first day, Judge Noreika told you the  
14:23:19 24 indictment is not evidence of anything, and you should not  
14:23:22 25 give any weight of it ever being filed. And I have told you

14:23:26 1 before and I'll say again, the next is the presumption of  
14:23:29 2 innocence. Hunter responded to the charges in this case by  
14:23:33 3 saying he was not guilty, and you should have seen by now  
14:23:36 4 that he is not guilty given reasonable doubt, the burden of  
14:23:39 5 proof, and the presumption of innocence. But if you think  
14:23:42 6 that the prosecutors tell you that that's the case, you know  
14:23:45 7 that's not the law. And the burden of proof, as Judge  
14:23:51 8 Noreika has explained, is always to the prosecutors, to  
14:23:54 9 convince each and every one of you individually that each  
14:23:57 10 element, there is no contesting that there was a handgun,  
14:24:01 11 there is no contesting that handgun wasn't made at StarQuest  
14:24:05 12 Supply that day, of course it came in interstate commerce,  
14:24:09 13 that's why we stipulated to that. But those elements are  
14:24:12 14 the ones that talk about intention to deceive knowingly and  
14:24:15 15 all of that is in context.

14:24:17 16           Again, that burden of proof does not allow you  
14:24:24 17 to consider or even convict on suspicion or conjecture. We  
14:24:30 18 surely pointed out those holes in the prosecutors's  
14:24:34 19 evidence, but remember in the burden, a defendant doesn't  
14:24:36 20 have to prove anything.

14:24:38 21           In his opening statement, Mr. Hines said, and  
14:24:43 22 now Mr. Wise has repeated, "no one is above the law." It  
14:24:50 23 does not matter what your name is, the law applies equally  
14:24:55 24 they said to all people. You know, he was right, but I  
14:24:59 25 think he missed the point. It means that Hunter deserves



14:25:01 1 those rights and protections and the prosecutor's heavy  
14:25:06 2 burden of proof as much as anyone, whether it was you, or  
14:25:10 3 your parents, or your sister, or your children, or your  
14:25:15 4 brothers, or your sisters, and finally, you remember that  
14:25:20 5 that burden of proof is the highest that we have in our  
14:25:23 6 system of justice. It is beyond a reasonable doubt. Which  
14:25:27 7 means it would cause an individual of ordinary  
14:25:32 8 responsibility to act in the most important issues in your  
14:25:36 9 own life. This is such a matter.

14:25:38 10 And finally, there is that requirement, which is  
14:25:44 11 the final protection for somebody not being convicted  
14:25:50 12 improperly and that requires each and every one of you to  
14:25:53 13 unanimously agree that each and every element has been  
14:25:57 14 proven beyond that reasonable doubt.

14:25:59 15 So, when you are considering the evidence, each  
14:26:04 16 of you has to determine that that did not happen.

14:26:08 17 Applying these rules in our system, designed to  
14:26:12 18 protect the innocent, you do not have to figure out why the  
14:26:15 19 prosecutors see the evidence differently to support their  
14:26:18 20 three felony charges, but you must focus on that all  
14:26:22 21 important set of rules about the burden, about what it  
14:26:25 22 means, about reasonable doubt, and when you do, when you  
14:26:30 23 consider that, this is what you will see. If you present  
14:26:41 24 hours of Hunter's book about his use of addiction in 2016,  
14:26:45 25 17, before the fall of 2018, or in 2019, but not even a full

14:26:51 1 page about October of 2018, that's reasonable doubt. If you  
14:26:55 2 prepare 75 pages of texts and photos of Hunter's use of  
14:26:59 3 drugs in the early parts of 2018, and ends as you remember  
14:27:04 4 with those 62 texts in February, and then you try to fill in  
14:27:08 5 the gap by going backwards and suggest by suspicion or  
14:27:12 6 conjecture that something must have happened before the gun  
14:27:15 7 sale because of the text exchange, that's reasonable doubt.

14:27:19 8 If your evidence of October is those facetious  
14:27:24 9 texts with Hallie or there after the fact trying to figure  
14:27:27 10 out whether 7-Eleven means he was getting a cup of coffee or  
14:27:31 11 a gram of drugs, that's reasonable doubt. If you show  
14:27:36 12 literally dozens of photos or texts with them not having  
14:27:43 13 location data to back them up until those that you can pick  
14:27:48 14 and choose, that is reasonable doubt.

14:27:51 15 If you make a case on Hunter's knowing with an  
14:27:56 16 intent to deceive lies on a form, the question that he asked  
14:28:00 17 does not say have you ever, but on the key question says are  
14:28:04 18 you, that's reasonable doubt. If that important all  
14:28:10 19 encompassing question, with all the pages of definitions,  
14:28:14 20 doesn't have anything to elucidate what "are" means, that is  
14:28:19 21 reasonable doubt. If the gun shop employers cannot figure  
14:28:23 22 out who did what and when, and despite seeking an ID with a  
14:28:27 23 residence, and the passport doesn't have one on the issue of  
14:28:30 24 materiality, that is reasonable doubt.

14:28:31 25 If the correct inference of what happened that

14:28:36 1 day has evidence of a new phone at an AT&T store, and that  
14:28:42 2 indicates what could have happened that day, not being an  
14:28:46 3 intent to buy a gun, but an intent to replace a phone by  
14:28:49 4 that wonderful whale hunter, that's reasonable doubt. And  
14:28:54 5 if you suggest to Naomi Biden that when she was texting him  
14:28:59 6 early in the morning hours, it is as Mr. Wise asked her  
14:29:03 7 because Hunter was with a man named Frankie or giving him a  
14:29:07 8 bank code, but you don't produce that man or any actual  
14:29:11 9 evidence that that exchange happened, and then you ask her  
14:29:17 10 if she uses cocaine, that is reasonable doubt.

14:29:21 11 And extraordinarily cruel to his daughter.

14:29:26 12 If you want to plug your gaping holes and proof  
14:29:29 13 by asking your own FBI agent the total amounts that went  
14:29:33 14 into a business account over the course of a year, so that  
14:29:36 15 you can flash the number \$3 million up on a screen as if to  
14:29:40 16 say what, at some point in his life there were funds and he  
14:29:43 17 was wealthy, as if that is the reason that's anything in  
14:29:46 18 this case, that's reasonable doubt.

14:29:49 19 And instead of real proof, you want to embarrass  
14:29:53 20 Hunter by asking in your last questions what Zoe Kestan's  
14:29:59 21 age was when they were together, that's reasonable doubt.

14:30:02 22 If after he bought the gun on October 12th there  
14:30:07 23 is absolutely no evidence that it ever was loaded, used,  
14:30:11 24 taken out in any of that period until Hallie Biden threw it  
14:30:14 25 out, or Ed banner fished it out, and you know that it was

14:30:18 1 Hunter, when hearing that who made sure that the police were  
14:30:23 2 called, that's reasonable doubt.

14:30:25 3 And if the government wants you to believe that  
14:30:28 4 Hunter was using, knowing he was violating the law by  
14:30:32 5 suggesting that the leather pouch had a few particles of  
14:30:35 6 residue but no one knew who put it there, when it was put  
14:30:39 7 there, where the pouch had been, and no one even bothered to  
14:30:43 8 get fingerprints, that is reasonable doubt.

14:30:46 9 And if the prosecutors want to use suspicion or  
14:30:50 10 conjecture, instead of Gordon Cleveland who had the most  
14:30:55 11 contact with Hunter on October 12th, and saw him on the day  
14:30:59 12 that matters and told you what he did not see, that is  
14:31:04 13 reasonable doubt.

14:31:05 14 And if the evidence, the prosecutors want you to  
14:31:09 15 believe, even about alleged use of drugs before he came back  
14:31:14 16 East, comes from somebody like Zoe Kestan, let me read what  
14:31:20 17 Judge Noreika has instructed you about her.

14:31:24 18 You have heard evidence that Hallie and Zoe  
14:31:35 19 Kestan have severed promises from the government that their  
14:31:38 20 testimony will not be used against them in a criminal case.

14:31:40 21 The testimony was received in evidence and may  
14:31:43 22 be considered by you. The government is permitted to  
14:31:46 23 present the testimony of someone who has received immunity  
14:31:50 24 in exchange for their testimony, but you should consider the  
14:31:54 25 testimony with great care and caution. You won't find that

14:32:00 1 instruction for anyone else.

14:32:04 2 Ladies and gentlemen, you have been patient with  
14:32:08 3 me and my colleagues and I know I've taken a bit of time  
14:32:12 4 today. But that is because of the importance of this issue  
14:32:15 5 and this case to Hunter's life.

14:32:17 6 The evidence here on these key issues is so  
14:32:21 7 lacking that many doubts about what they have presented or  
14:32:25 8 more importantly failed to present should now be clear to  
14:32:29 9 you. You can go back to the jury room and take hours to  
14:32:32 10 review the so many texts and documents again, but you  
14:32:36 11 already know what they show, and more importantly you know  
14:32:39 12 what they don't show. There is no proof beyond that  
14:32:42 13 reasonable doubt that Hunter knowingly possessed a gun when  
14:32:45 14 he believed himself to be a drug addict, or lied with that  
14:32:48 15 intent to deceive on a form that asked him that.

14:32:51 16 One more thing that I need to explain to you,  
14:32:54 17 when I sit down, because of that very, very high burden of  
14:32:58 18 proof, the prosecutors get to have one more argument. They  
14:33:02 19 may think they have the last word, but actually you have the  
14:33:06 20 last word. Each of you individually.

14:33:12 21 When Mr. Hines gets up and does all over again,  
14:33:16 22 going through that which Mr. Wise said, and tries to say  
14:33:19 23 what I said is not right, they have that occasion, when they  
14:33:25 24 do that, please remember the two different hands, and notice  
14:33:30 25 what's not in the one that matters.

14:33:33 1           So let me ask you this. If someone in the jury  
14:33:36 2 room asks you well, what about that 2016 period? What about  
14:33:40 3 the 2017 period? What about the first part of 2018 period,  
14:33:44 4 or bring up the texts that you heard only after the weekend  
14:33:47 5 when they this morning put it up as if that's more than  
14:33:51 6 conjecture and suspicion and doesn't have location data. I  
14:33:54 7 want you one of you to say as follows, please one of you  
14:33:57 8 remember when Zoe Kestan has photos when he's using drugs  
14:34:00 9 but has no photos for the key period in September, I want  
14:34:05 10 one of you to point out that the lack of texts with drug  
14:34:07 11 lingo, I'd like one of you to point out the lack of photos  
14:34:08 12 or videos using pipes or scales, and I would like one of you  
14:34:11 13 to make sure that when you see the texts, which says I am  
14:34:15 14 with Mookie, or Bernard, or I'm sitting on top of a car  
14:34:18 15 smoking crack, what was happening between Hallie and Hunter  
14:34:22 16 when that happened.

14:34:23 17           And here is why. I don't know if you noticed,  
14:34:28 18 but everyone stood every time you come in the courtroom and  
14:34:33 19 when you leave. And that we do for Judge Noreika as well.  
14:34:39 20 That's because you, too, are the judges, in fact, as the  
14:34:42 21 Judge has told you, it is you, and not her, are the judges  
14:34:46 22 of the facts. And that's how important our system depends  
14:34:49 23 on you to be the fair and impartial jurors that you swore  
14:34:52 24 that you would be.

14:34:54 25           So in that way, I want to thank Judge Noreika



14:34:57 1 and her deputy clerks, and her law clerks, for their 24/7  
14:35:03 2 hard work. I want to thank Mr. Hawkins, our court reporter,  
14:35:07 3 for getting it down in evidence, when all of us spoke too  
14:35:10 4 quickly. I probably owe him a greater amount of apology  
14:35:14 5 than the others.

14:35:15 6 But especially I want to thank you for giving up  
14:35:19 7 so much of your time to make sure the system works and that  
14:35:23 8 justice be done.

14:35:26 9 Up until now, I, and my amazing colleague,  
14:35:32 10 David, Bella, Dorothy, and Mr. Radic, we have had Hunter's  
14:35:38 11 life in our hands. But now I have to give it to you. But  
14:35:44 12 I'm doing that with a confidence because I know you will  
14:35:50 13 remember the rules, you will remember the burdens, you'll  
14:35:53 14 remember the requirements, and you'll see through those  
14:35:55 15 rules the so many things that the promise the prosecutors  
14:35:59 16 made for proof beyond a reasonable doubt does not exist.

14:36:02 17 But for all the words that I have spoken and you  
14:36:06 18 know I have spoken so many in this courtroom, you have heard  
14:36:09 19 over the past weeks mine were not anywhere as near as good  
14:36:13 20 as Hunter's when you heard him say as follows: "Remembering  
14:36:18 21 all those things feels like a terrible betrayal of where I  
14:36:23 22 am now. It induces an urge that's completely counter to how  
14:36:27 23 far I have come. When you realize the effect those  
14:36:30 24 recollections can have on your body and mind causing them to  
14:36:34 25 work against your deepest desire not to be in that place

14:36:38 1 they prompt feelings of shame and guilty."

14:36:43 2 So with all you've heard, ladies and gentlemen,  
14:36:46 3 with my last breaths in this case, I ask you for the only  
14:36:52 4 verdict that will hold the prosecutors to what the law  
14:36:55 5 requires of them, and to come back and to say that Hunter is  
14:37:01 6 not guilty.

14:37:03 7 Thank you so much.

14:37:09 8 THE COURT: How long do you think it's going to  
14:37:12 9 be?

14:37:12 10 MR. HINES: Probably about fifteen minutes.

14:37:14 11 THE COURT: Fifteen minutes, do you have  
14:37:15 12 fifteen minutes or do you want to take a break?

14:37:19 13 A JUROR: Can I run to the restroom?

14:37:20 14 THE COURT: I think they need a restroom break.  
14:37:23 15 Let's take fifteen minutes.

14:37:25 16 COURTROOM DEPUTY: All rise.

14:37:28 17 (Jury exiting the courtroom at 2:37 p.m.)

14:38:06 18 MR. LOWELL: Your Honor, fifteen?

14:38:07 19 THE COURT: Yes.

14:38:11 20 MR. HINES: May we be excused, Your Honor?

14:38:13 21 THE COURT: You may. I'm sorry, I know I'm  
14:38:16 22 delaying this.

14:38:16 23 MR. LOWELL: Fifteen minute break.

14:38:17 24 THE COURT: Yes.

14:38:18 25 MR. LOWELL: Thank you.

14:38:19 1 (A brief recess was taken.)

14:55:40 2 COURTROOM DEPUTY: All rise.

14:55:47 3 (Jury entering the courtroom at 2:55 p.m.)

14:55:53 4 THE COURT: All right. Welcome back. All  
14:56:13 5 right. Everyone else may be seated.

14:56:15 6 Mr. Hines.

14:56:17 7 MR. HINES: Thank you, Your Honor.

14:56:18 8 Before he concluded, Mr. Lowell suggested that I  
14:56:22 9 would come up here and go over and over everything that  
14:56:25 10 Mr. Wise discussed with you over the course of his hour long  
14:56:30 11 presentation. I don't need to do that. Nothing that  
14:56:33 12 Mr. Lowell said under minds what Mr. Wise said in his  
14:56:37 13 closing. We went over meticulously the facts and the law.  
14:56:42 14 The issues that you are actually considering when you go  
14:56:45 15 back into that jury deliberation room.

14:56:48 16 At the outset, there were a number of things  
14:56:51 17 that the defense said, which were completely unfair.  
14:56:54 18 Mr. Lowell suggested you have this man's life in your hands.  
14:56:58 19 You don't have his life in your hands, that's not what  
14:57:01 20 you're being asked to do. You're asked to make a  
14:57:04 21 determination of the facts and apply the judge's law.  
14:57:08 22 That's it. Nothing more, nothing less. That's what a  
14:57:13 23 verdict is. It means to speak the truth, than make a  
14:57:17 24 finding about what happened. Was he an addict, did he know  
14:57:20 25 he was an addict? That's what you're going back there to

14:57:23 1 do. Anything else, that's up to Her Honor moving forward.  
14:57:27 2 She'll take that into consideration.

14:57:29 3 Now, Mr. Lowell has used this phrase over and  
14:57:35 4 over and I think it's correct, I think it fits exactly what  
14:57:39 5 the defense has done in this case. He keeps saying he's  
14:57:42 6 telling you a story, remember that? Remember that from his  
14:57:46 7 opening? He said this is the story of this, and this is the  
14:57:49 8 story of that. That's exactly what he's done in this case.  
14:57:54 9 It's simply a story, a fictional story, it's not supported  
14:57:58 10 by the evidence. And that's why the words of lawyers,  
14:58:01 11 including myself, but Mr. Lowell as well, are not evidence  
14:58:05 12 that you will be asked to determine in this case, the  
14:58:08 13 evidence is what you hear from that witness stand.

14:58:11 14 Now, we're going to go through some of the  
14:58:21 15 stories that Mr. Lowell told.

14:58:23 16 First, Mr. Lowell pretended as if he was quoting  
14:58:27 17 the defendant saying hi, I'm Hunter Biden and I'm an addict.  
14:58:32 18 Start with this. That's not evidence you heard from that  
14:58:36 19 witness stand. No witness got up there and said those  
14:58:40 20 words.

14:58:41 21 That's not evidence that you can consider in  
14:58:44 22 this case.

14:58:45 23 And what Mr. Lowell is doing by saying that over  
14:58:48 24 and over and throwing it out there is he's cheapening those  
14:58:52 25 words. As you heard from Hallie Biden, those words mean

14:58:55 1 something. When you say it, you mean it. What Mr. Lowell  
14:59:00 2 could have said, but left out, was he could have said hi, my  
14:59:05 3 name is Hunter Biden and I am an addict, and I chose to lie  
14:59:09 4 and buy a gun, because that's why we're here. He went that  
14:59:14 5 additional step and chose to buy a gun on October 12th,  
14:59:18 6 2018. Had he just been an addict, had he been troubled, had  
14:59:22 7 he continued to use narcotics, smoke crack every 15 minutes  
14:59:27 8 throughout 2018 and decided not to buy a gun, we wouldn't be  
14:59:32 9 here in this courtroom. Choices have consequences and  
14:59:36 10 that's why we're here.

14:59:37 11 Now, Mr. Lowell suggested that it was unfair and  
14:59:44 12 that we were playing portions of the defendant's book in  
14:59:48 13 this trial. We played about an hour of audio in this case.  
14:59:51 14 And he made two different arguments regarding that audio,  
14:59:54 15 first of all, he said we picked and choose out of context  
14:59:58 16 what we were playing. Well we played a full hour, would you  
15:00:01 17 like to have heard more of that audio book? And second, he  
15:00:05 18 suggested it was sort of unfair that we were playing this  
15:00:09 19 book, which was evidence of the defendant's addiction. He  
15:00:11 20 spoke those words. He's the one who chose to release an  
15:00:15 21 audio book in this case about his life and about his  
15:00:18 22 addiction and his troubles in the year 2018, the year he  
15:00:21 23 chose to buy a gun. That evidence is important evidence  
15:00:25 24 because it shows you throughout that time period, throughout  
15:00:28 25 2018, including October that the defendant was in fact using

15:00:33 1 crack cocaine.

15:00:33 2 Mr. Lowell also said that the testimony of Naomi  
15:00:41 3 Biden was cruel, those are his words, cruel. Who called the  
15:00:46 4 defendant's daughter as a witness in this case? Not us.  
15:00:50 5 The defendant called Naomi Biden as a witness in case. And  
15:00:54 6 you saw up there on the stand how uncomfortable she was.  
15:00:58 7 The anguish sitting there knowing she was testifying as a  
15:01:02 8 defense witness, but she had to tell the truth. Right? You  
15:01:07 9 know that she was up there completely uncomfortable, you  
15:01:10 10 could see it. She couldn't vouch for the defendant's  
15:01:14 11 sobriety throughout that month of October, she couldn't do  
15:01:17 12 it on that witness stand. So sometimes when you see a  
15:01:20 13 witness up there and how they're acting, you can take your  
15:01:24 14 real life tools that you use to evaluate credibility and  
15:01:27 15 assess what people are saying and that means something, you  
15:01:34 16 know exactly what she was saying when she was up there on  
15:01:38 17 that witness stand. Mr. Lowell referenced this lock box  
15:01:41 18 over and over again, accused us of not putting it in to  
15:01:45 19 evidence, although we brought it here to the courtroom for  
15:01:48 20 him to use. It's piece of plastic, I don't understand what  
15:01:52 21 the reference is over and over. The defendant walked into  
15:01:54 22 StarQuest Shooter, walked out with a revolver, walked out  
15:01:58 23 with a speed loaded that would rapidly re-load that  
15:02:02 24 revolver, walked out with hollow point ammo, the kind of  
15:02:05 25 ammo that widens when it comes in to contact, ripping to



15:02:09 1 shreds a diameter anything it comes into contact with. He's  
15:02:13 2 talking about the plastic case. The evidence in this case,  
15:02:16 3 at the end, in October, October 23rd, that gun isn't in that  
15:02:19 4 plastic case, that gun is not in a lock box that locked in  
15:02:24 5 your vehicle. He's keeping it in a Raptor, his vehicle, you  
15:02:28 6 have seen the evidence from his book and elsewhere that he's  
15:02:31 7 continuing to meet drug dealers for his fix. He even told  
15:02:34 8 you in his book that he would go to these drug deals, show  
15:02:38 9 up to them, he had a gun pointed in his face on prior  
15:02:43 10 occasions. He told you in his book he learned how to  
15:02:46 11 protect himself.

15:02:47 12 A plastic lock box means nothing. The defendant  
15:02:50 13 was a crack addict and a drug user and he had a gun, that's  
15:02:54 14 a violation of the law.

15:02:56 15 Mr. Lowell said -- he accused us of not  
15:03:02 16 presenting the knowing, knowingly element. I mean, I can't  
15:03:06 17 tell you how many times Mr. Wise stood up here, how many  
15:03:10 18 slides were addressed to the knowingly element. The  
15:03:14 19 evidence clearly shows the defendant knew he was a drug  
15:03:17 20 addict, we proved that beyond a reasonable doubt seven ways  
15:03:21 21 to Sunday.

15:03:21 22 It may seem obvious, but someone who holds a  
15:03:25 23 crack pipe to their mouth every 15 minutes knows they're a  
15:03:29 24 drug user and a drug addict. But he also said, he said it  
15:03:33 25 in his book, and he said it in his text messages over and

15:03:36 1 over and over again.

15:03:38 2 Mr. Lowell -- one thing I did agree with him  
15:03:42 3 using was this accordion analogy, he used an analogy saying  
15:03:47 4 that the government is playing this accordion and it's  
15:03:50 5 opening and closing. That's consistent with the law, what  
15:03:54 6 Mr. Lowell wants to do is he wants to make music from the  
15:04:00 7 accordion by keeping it compressed, he doesn't want to  
15:04:03 8 expand it, but that music doesn't play unless you open the  
15:04:06 9 bag and fill it with air and close the bag and let the air  
15:04:10 10 come out while you're playing the keys. That's exactly what  
15:04:13 11 the law says in this case. As Your Honor has instructed you  
15:04:16 12 with respect to the definition of an unlawful user of a  
15:04:19 13 controlled substance, use of a controlled substance is not  
15:04:22 14 limited to use of drugs on a particular day. This is on  
15:04:25 15 page 18 of your instructions. Or within a matter of days,  
15:04:29 16 or weeks, before, but rather that the unlawful use has  
15:04:33 17 occurred recently enough to indicate that the individual is  
15:04:37 18 actively engaged in such conduct. An inference that a  
15:04:41 19 person was a user of a controlled substance may be drawn  
15:04:45 20 from evidence of a pattern of use or possession of a  
15:04:48 21 controlled substance that reasonably covers a time period  
15:04:50 22 that the firearm was possessed.

15:04:52 23 So what Mr. Lowell has sought to do in this case  
15:04:55 24 is have you look with myopic focus on a narrow window of  
15:05:00 25 time without looking at the big picture. That's not what

15:05:02 1 the law is. Her Honor has instructed you exactly as I just  
15:05:08 2 read to you, pattern of use is probative of whether or not  
15:05:11 3 he was using and whether or not he was an addict when he  
15:05:14 4 checked that box on that form on October 12th, 2018.

15:05:19 5 Through that lens, the myopic focus like an  
15:05:33 6 accordion that's not expanding that Mr. Lowell has applied  
15:05:37 7 this case, he seeks you to view the text messages that you  
15:05:41 8 saw where there are numerous messages in the month of  
15:05:44 9 October, numerous messages in which the defendant is clearly  
15:05:47 10 saying he's smoking crack, you saw the chart Mr. Wise put up  
15:05:51 11 and the comparison from the summer of 2018, and how there  
15:05:54 12 are actually more messages in October than we put up for  
15:05:57 13 July of 2018 in this case. Remember that the absence of a  
15:06:04 14 message on any given day does not mean -- does not equate  
15:06:09 15 the defendant was not a drug user or drug addict. Think  
15:06:12 16 about your real life experiences, do you ever go to the  
15:06:15 17 grocery store and get milk, do you ever have a spouse or  
15:06:19 18 family member or father, a mother, a child who has asked you  
15:06:23 19 to go to the grocery store to get milk, you do it routinely,  
15:06:28 20 I do the shopping in my family for milk for my little son  
15:06:33 21 who downs it, sometimes my wife will text me, sometimes  
15:06:36 22 she'll call me, sometimes I know to go pick it up, I know if  
15:06:39 23 I look at my phone, I can see one message on my phone to go  
15:06:43 24 get whole milk in the last month, that doesn't mean I didn't  
15:06:48 25 go get whole milk every other day, my son didn't starve,

15:06:48 1 think about the real life experiences when you evaluate that  
15:06:52 2 evidence and you can apply that in this case. The absence  
15:06:53 3 of a message on any given day does not mean that the  
15:06:55 4 defendant suddenly was not a drug user or a drug addict.  
15:07:00 5 Similarly with the photographs that we saw on the screen.  
15:07:04 6 Zoe Kestan has an incredible camera roll, her camera role  
15:07:08 7 documented over the course of months her interactions with  
15:07:10 8 the defendant over and over and over again, you saw drug use  
15:07:14 9 in some of those photos, but we also saw photos where there  
15:07:17 10 wasn't evidence of drug use, and she testified about that.  
15:07:20 11 If you look at her testimony it matches with what the  
15:07:23 12 defendant said in his book when he was on this month's long  
15:07:26 13 rolling party throughout the summer of 2018, she's along  
15:07:29 14 there, she's with him every step of the way, right. The  
15:07:32 15 only photos that don't show crack that the defendant has  
15:07:37 16 highlighted are those that are in September of 2018 when  
15:07:40 17 they're at the Malibu, but again, just because you don't  
15:07:43 18 have a photo of something doesn't mean it didn't happen. Do  
15:07:46 19 you take photos of every meal you eat during the day,  
15:07:50 20 perhaps not, that doesn't mean you didn't eat breakfast this  
15:07:53 21 morning, right? Zoe was photographing things throughout her  
15:07:57 22 course of dealings with the defendant, but the absence of  
15:07:59 23 one photograph on any given day does not mean that her  
15:08:03 24 testimony was false.

15:08:03 25 We showed you some messages this morning where

15:08:09 1 the defendant was meeting individuals at the 7-Eleven  
15:08:15 2 before, during, the gun purchase, and you also saw how he  
15:08:20 3 described in his book meeting drug associates at 7-Eleven's.  
15:08:25 4 Again, the story that Mr. Lowell told you was that he  
15:08:29 5 suggested that he was there merely to get a cup of coffee,  
15:08:32 6 but I don't know about you, when you get a cup of coffee, do  
15:08:36 7 you have to text in that manner where you can't actually  
15:08:39 8 describe to the individual that you're talking to what  
15:08:41 9 you're getting, in cryptic code about meeting up at a  
15:08:46 10 7-Eleven in the middle of the night. Again, in that jury  
15:08:49 11 box, you can use your common sense and the tools you have in  
15:08:52 12 real life to know that what the defense is telling you is  
15:08:55 13 just a story, not supported by the evidence.

15:08:58 14 Mr. Lowell attacked Mr. Cleveland as the whale  
15:09:07 15 hunter in this case for selling the defendant a firearm. He  
15:09:10 16 is a man who is a salesman at a gun store. On that day,  
15:09:14 17 Mr. Biden decided to walk into that gun store. He knew what  
15:09:17 18 he was getting into. You saw the front of that store, you  
15:09:20 19 know exactly what was on that store. That was his choice,  
15:09:23 20 nobody forced him to go in there. He could have gone to the  
15:09:26 21 AT&T store and gone home, not gone to that gun store, like I  
15:09:31 22 told you a moment ago, we wouldn't be here today, that was  
15:09:34 23 his choice to walk in there, remember what Mr. Cleveland  
15:09:39 24 told you. When Mr. Biden went in that store it was him, the  
15:09:42 25 defendant, that said he wanted a revolver. The fact that

15:09:44 1 the Mr. Cleveland talked about the different types of  
15:09:48 2 revolvers that were available is of no moment. When  
15:09:51 3 Mr. Biden decided to misrepresent and lie on that form,  
15:09:54 4 that's when the crime was completed, it doesn't matter what  
15:09:57 5 type of gun he bought at that moment, he was a drug user and  
15:10:00 6 a drug addict.

15:10:01 7 Now, one of the other stories that Mr. Lowell  
15:10:05 8 has said is he's asked you to look at the form, past Section  
15:10:12 9 A, Section A is the portion of the form that the defendant  
15:10:14 10 filled out, and that's where the crime occurred, he's asked  
15:10:18 11 you to look past that at the instructions at the very end of  
15:10:22 12 the form and look and see whether or not drug user or addict  
15:10:26 13 is defined in some manner. Well first of all, some things  
15:10:32 14 in life don't need an explanation. Right. Some things are  
15:10:35 15 so obvious you don't need to know what that means. Are you  
15:10:39 16 hungry, you don't need a definition for that. Is your  
15:10:42 17 stomach rumbling, well that means you're hungry, you don't  
15:10:45 18 need to go to the novice section to figure out whether  
15:10:48 19 you're a drug user or drug addict. The other suggestion  
15:10:51 20 that the defense has made is that Gordon Cleveland, the man  
15:10:55 21 who runs -- drives a trash truck during the day, and works  
15:10:59 22 at the StarQuest Shooters in the evening to make some  
15:11:01 23 additional cash had to explain to Yale educated defendant  
15:11:06 24 Hunter Biden, what the words unlawful user and crack addict  
15:11:11 25 meant, that just a preposterous notion, those words are



15:11:15 1 plain as day, the evidence shows he knew what those words  
15:11:18 2 meant, he knew what those words meant, you can see that  
15:11:22 3 reflected in his book as he writes about his experience and  
15:11:26 4 knows at that time he was a drug user and a drug addict.

15:11:29 5 Mr. Lowell has asked to you discuss just on one  
15:11:37 6 piece of evidence here on the brown leather pouch, and has  
15:11:40 7 built this out to suggest that where did the cocaine come  
15:11:43 8 from, who done it, as if it's some mystery. Inside the  
15:11:48 9 defendant's brown leather pouch was a white residue. That  
15:11:52 10 brown leather pouch sat in an evidence vault for five years  
15:11:56 11 and was tested by the FBI and confirmed to be cocaine.  
15:11:59 12 There is no mystery about whose cocaine it was, there is no  
15:12:03 13 mystery about whose brown leather pouch it was. You saw  
15:12:07 14 text messages from Hallie Biden in which she discussed with  
15:12:10 15 the defendant that he had brown leather pouches and he had  
15:12:12 16 crack stems in them and they were near her children, and she  
15:12:16 17 asked him to get rid of them. You saw that evidence in this  
15:12:18 18 case. You heard her testimony that she put the revolver in  
15:12:21 19 the brown leather pouch that was his that he used to store  
15:12:24 20 drugs, and that she put it in the trash can in the bag, and  
15:12:28 21 then you heard Mr. Banner talked about retrieving that brown  
15:12:32 22 leather pouch from the trash can, inside of it was some  
15:12:35 23 cocaine. That cocaine that was tested by Dr. Brewer and  
15:12:39 24 confirmed to be cocaine is evidence that the defendant was  
15:12:42 25 using drugs during the time period he possessed the gun.

15:12:45 1 There is no evidence, no evidence, what Mr. Lowell says is  
15:12:48 2 just a story, just like what I say is just argument, there  
15:12:52 3 is no evidence that the brown leather pouch is anybody  
15:12:55 4 else's in this case, period, and there is no evidence that  
15:12:57 5 someone else put cocaine in the defendant's brown leather  
15:13:01 6 pouch.

15:13:01 7 So Mr. Lowell talked about reasonable doubt  
15:13:11 8 during his closing and he put up a slide, I would submit to  
15:13:15 9 you that none of those things on that slide equate to  
15:13:18 10 reasonable doubt.

15:13:18 11 I want to go through a couple of things that I  
15:13:22 12 would submit to you, you would have to believe to find that  
15:13:26 13 there was reasonable doubt in this case, and the evidence  
15:13:28 14 just doesn't support that there is reasonable doubt.

15:13:31 15 The first thing you would have to believe is  
15:13:33 16 that Zoe Kestan lied about seeing Hunter Biden use crack  
15:13:38 17 every 20 minutes when she was with him. Now he said in his  
15:13:41 18 book he used crack every 15 minutes. She saw him at The  
15:13:45 19 Freehand and at the Malibu house in September 2018, and  
15:13:48 20 observed him smoking crack again and again several weeks  
15:13:51 21 after his rehab. Ms. Kestan's testimony about events just  
15:13:59 22 weeks before the gun purchase is in and of itself enough to  
15:14:04 23 find the defendant guilty in this case. It was not under  
15:14:08 24 minded in any way shape or form merely because she didn't  
15:14:12 25 happen to have a photo of him smoking crack during this same

15:14:17 1 time period. Ask yourself why would the defendant if he was  
15:14:20 2 truly in rehab, truly trying to turn the corner and stay  
15:14:23 3 sober and be sober, why would he invite back Zoe Kestan,  
15:14:28 4 someone who tolerated his crack use month after month after  
15:14:31 5 month throughout 2018, why would he have her come out and  
15:14:35 6 visit in Malibu, and why was he withdrawing hundreds and  
15:14:39 7 hundreds and sometimes thousands of dollars a day in cash  
15:14:42 8 and that -- speaking of cash for a moment, that narrative  
15:14:45 9 completely fell apart from the defense in this case, what  
15:14:48 10 they said in opening about stays, Airbnb stays, liquor  
15:14:53 11 purchases, things of that nature, payments for treatment, we  
15:14:56 12 showed you the bank statements in this case, all of that is  
15:14:59 13 documented on the check card, as you would expect. There is  
15:15:02 14 no evidence that any cash was ever used for any of those  
15:15:05 15 purchases. So what's the \$151,000 used for in this case?  
15:15:09 16 You can see in the bank statement, all the purchases you  
15:15:13 17 would expect someone to make are documented by the check  
15:15:15 18 card as Agent Romig testified, and as you heard Agent Jensen  
15:15:20 19 testify, those cash withdrawals are indicative of the  
15:15:24 20 continual significant drug use that the defendant described  
15:15:26 21 in his book.

15:15:28 22 The second thing you would have to believe in  
15:15:31 23 addition to -- well, before I leave Zoe for a minute, the  
15:15:35 24 defense has suggested that because she had an immunity  
15:15:38 25 agreement that that somehow undermines her testimony. The

15:15:42 1 immunity that you heard her testify about requires her to  
15:15:45 2 tell the truth. What's the one thing that could get her in  
15:15:48 3 trouble here in this courtroom, if she lied, if she lied,  
15:15:52 4 and said something that wasn't true. So I submit to you an  
15:15:57 5 immunity agreement is not a license to lie, it's an  
15:16:00 6 agreement to tell the truth. There is no evidence that Zoe  
15:16:05 7 Kestan felt like she should lie in this courtroom and risk  
15:16:08 8 being prosecuted for those lies, period. No evidence  
15:16:12 9 whatsoever in this case.

15:16:14 10 The second thing you would have to believe if  
15:16:18 11 you felt like there was reasonable doubt was that Hunter  
15:16:23 12 Biden lied to Hallie Biden in his text messages in October  
15:16:26 13 of 2018. They want you to believe that the defendant is a  
15:16:30 14 liar. He literally wrote to Hallie and sent incriminating  
15:16:35 15 message after incriminating message. But as Mr. Wise said  
15:16:39 16 in closing, why would you do that if you were trying to lie?  
15:16:43 17 If you saw the relationship that the two of them had and  
15:16:47 18 Hallie testified to that on the stand. Did the person  
15:16:50 19 that's trying to help you and get you sober, why would you  
15:16:53 20 tell that person that you were on a car smoking crack or at  
15:16:56 21 a 7-Eleven, indeed we saw him at a 7-Eleven around that time  
15:17:01 22 period, why would you do that if in fact you were lying,  
15:17:04 23 just say you were off in D.C., say you were at the office,  
15:17:07 24 say you're at the bar, say you were somewhere else, he  
15:17:11 25 didn't say any of those things, he said he was smoking

15:17:13 1 crack. There is no evidence whatsoever that he was lying in  
15:17:16 2 those messages. Indeed the defendant's own words were  
15:17:19 3 there, "is my truth".

15:17:20 4 The third thing you would also have to believe  
15:17:23 5 is that the defendant lied in his book, Beautiful Things,  
15:17:27 6 lied throughout the book. You would have to believe that he  
15:17:30 7 lied in the prologue when he described himself as a drug  
15:17:33 8 addict. You have to believe he lied in Chapter 7, Cracked,  
15:17:37 9 when the defendant discussed smoking crack around the clock  
15:17:40 10 every day, still making his meetings sometimes, still  
15:17:43 11 returning calls sometimes, but nonetheless describing  
15:17:47 12 himself as an addict. You would have to believe that the  
15:17:50 13 defendant described himself incorrectly when he said those  
15:17:56 14 things. Again, there is no story that Mr. Lowell has given  
15:18:00 15 in this case under mines this message. The defendant's  
15:18:06 16 words were true in his book. You would also have to believe  
15:18:11 17 that the defendant lied at the end of Chapter 8 when he  
15:18:14 18 stated that he stayed clean for only two weeks after the  
15:18:18 19 August stint to a rehab center, meaning he was using again  
15:18:21 20 by mid September. Zoe Kestan confirmed that. You also have  
15:18:25 21 to believe he was lying in his book when he said he had  
15:18:29 22 relapsed, after describing his heavy use of crack in that  
15:18:32 23 same chapter.

15:18:33 24 And speaking of stories, what the defendant said  
15:18:36 25 in his book, if you'll recall, right before coming back to

15:18:40 1 Delaware, he says I told family back in Delaware I was  
15:18:45 2 working on my sobriety, whatever the hell that meant at this  
15:18:49 3 point. Here is what it meant, nothing, "I got good at  
15:18:53 4 telling stories like that." Consistent with the defense in  
15:18:57 5 this case.

15:19:02 6 So ask yourself when you look at the words in  
15:19:05 7 that book, and you look at the end of the chapter that  
15:19:08 8 begins California Odyssey, detailing the months leading up  
15:19:12 9 to October 2018, and then you look at the beginning of the  
15:19:15 10 next chapter that details his return to Delaware, you will  
15:19:19 11 see the defendant say he had the hope of getting sober, not  
15:19:24 12 staying sober, you see the defendant say he was in full  
15:19:29 13 blown addiction, not alcohol only, anything like that, but  
15:19:34 14 his words, believe his words in his book, because what those  
15:19:37 15 words show is that he knew he had used crack cocaine, he had  
15:19:42 16 relapsed, he was an addict, and an unlawful user.

15:19:47 17 The fourth thing you would have to believe is  
15:19:52 18 that all that cash was withdrawn for some reason other than  
15:19:55 19 drugs, \$151,000, that that was used for something other than  
15:19:59 20 drugs. There is no evidence that it was used for anything  
15:20:02 21 but drugs in this case, and at least a portion of that money  
15:20:06 22 went to fund his drug purchases.

15:20:10 23 The fifth thing you would have to believe if you  
15:20:13 24 found that the government had not met its burden was that  
15:20:15 25 Naomi Biden lied when she said her father was unreachable



15:20:19 1 and was only reaching out to her in the middle of the night  
15:20:22 2 after he was in New York City for several days. You would  
15:20:24 3 have to find out he was blowing her off for some other  
15:20:28 4 reason other than using drugs and partying all night, which  
15:20:30 5 is what those messages show that we introduced this morning.  
15:20:34 6 There is no evidence of any other reason, that's what he was  
15:20:37 7 doing up there in New York, and you saw the anxiousness on  
15:20:40 8 her face when she testified to that on the witness stand.

15:20:43 9           The sixth thing you would have to believe that  
15:20:45 10 is that Hallie Biden was lying for some unexplained reason,  
15:20:49 11 lying about finding drugs in the defendant's truck on the  
15:20:52 12 day in question. She like Zoe, has immunity, again immunity  
15:20:57 13 requires her to tell the truth. That's the one, lying is  
15:21:00 14 the one thing that could risk her getting into trouble in  
15:21:03 15 this case. If she had lied, she could be prosecuted for  
15:21:07 16 lying.

15:21:07 17           I submit to you that given her prior personal  
15:21:11 18 relationship with the defendant, if anything, she would have  
15:21:14 19 had an incentive to shave the truth in his favor, not  
15:21:19 20 testify against him. There is no evidence that contradicts  
15:21:23 21 her testimony in this case. Again, the story that  
15:21:26 22 Mr. Lowell has said is not evidence from that witness stand.

15:21:32 23           The seventh thing you'd have to believe is that  
15:21:35 24 someone other than Hunter Biden put the cocaine in his brown  
15:21:38 25 leather pouch. Who was it? Was it Mr. Banner? Was it some

15:21:42 1 other intermediary that we don't know, was it the police?  
15:21:47 2 There is no evidence of any of that. It was the defendant's  
15:21:50 3 brown leather pouch, and inside that leather pouch, it was  
15:21:53 4 his cocaine as Hallie Biden testified, when she found the  
15:21:56 5 items in his truck, she found drug remnants and drug  
15:22:00 6 paraphernalia and consistent with that, in the very pouch  
15:22:04 7 where he stored his drugs, there was cocaine residue.

15:22:07 8 So I submit to you to believe that the  
15:22:11 9 government has not met its burden you would have to believe  
15:22:14 10 all of those seven things. What a miraculous trial this  
15:22:20 11 would have been if all those seven things were to have  
15:22:22 12 occurred. Did everybody take that stand and lie? I submit  
15:22:25 13 to you the evidence shows overwhelmingly they did not.  
15:22:30 14 There is overwhelming evidence in this case of the  
15:22:34 15 defendant's guilt beyond a reasonable doubt.

15:22:36 16 When Mr. Lowell was talking about the lock box  
15:22:45 17 and the gun and keeping it safe, he sort of minimized the  
15:22:55 18 defendant's possession of the gun during this time frame.  
15:22:59 19 He had control of that firearm the entire time, even during  
15:23:03 20 his brief couple of days up in New York, where ever that  
15:23:07 21 firearm was, it was his, he never transferred ownership of  
15:23:10 22 it, you didn't see any documentation of that, there is no  
15:23:13 23 evidence he gave it to somebody else, even if it was at his  
15:23:16 24 home in Delaware or some other location, he clearly came  
15:23:19 25 back and got it, he had it in the trunk of his car on

15:23:22 1 October 23rd, 2018, that's possession, that meets the law  
15:23:25 2 that Her Honor has instructed you, he exercised control over  
15:23:30 3 it, he had control over that firearm at all given times and  
15:23:34 4 therefore he possessed it.

15:23:35 5 In his book, the defendant said that the  
15:23:41 6 desperation of crack can "most certainly induce violent  
15:23:47 7 behavior." The law as we have and the laws that are at  
15:23:52 8 issue in this case exist to prohibit crack users and crack  
15:23:57 9 addicts and drug users from owning guns. We didn't make the  
15:24:02 10 laws, congress makes the laws. We enforce the laws. You  
15:24:07 11 decide whether the law is broken. It's plain and simple.  
15:24:11 12 These same laws apply to the defendant just like they would  
15:24:15 13 to anybody else.

15:24:17 14 You have heard overwhelming evidence in this  
15:24:22 15 case, the defendant was a crack addict and an unlawful user  
15:24:26 16 and illegally owned a gun. If this evidence did not  
15:24:29 17 establish that Hunter Biden was a crack addict, and an  
15:24:32 18 unlawful user, then no one is a crack addict or an unlawful  
15:24:37 19 user.

15:24:37 20 We ask that you return the only verdict during  
15:24:41 21 your deliberations, the only verdict that is supported by  
15:24:44 22 the evidence in this case, all three counts, there is  
15:24:48 23 overwhelming evidence of the defendant's guilt, and in the  
15:24:51 24 end of this case, we ask that you find that the law applies  
15:24:56 25 equally to this defendant just like it would to anybody else

15:24:59 1 because when he had a choice to make on October 12th, 2018,  
15:25:03 2 he chose to lie and buy a gun, he violated the law. So  
15:25:07 3 we'll ask that you return the only verdict that is supported  
15:25:10 4 by the evidence and that is a verdict of guilty on all three  
15:25:13 5 counts.

15:25:14 6 THE COURT: All right. Thank you. Members of  
15:25:17 7 the jury, I'm just going to pick up at the end of the  
15:25:20 8 instructions and then let you get to your deliberations.

15:25:23 9 Let me explain some things about your  
15:25:26 10 deliberations and your possible verdicts.

15:25:28 11 First, by custom of this Court, Juror Number 1  
15:25:32 12 is the jury foreperson. Congratulations, you won the  
15:25:37 13 lottery. This person will speak for the jury here in court.  
15:25:39 14 She will also preside over your discussions. However, the  
15:25:42 15 views and the votes of the foreperson are entitled to no  
15:25:45 16 greater weight than those of any other juror.

15:25:47 17 Second, I want to remind you that your verdict  
15:25:50 18 whether it is guilty or not guilty must be unanimous. To  
15:25:53 19 find the defendant guilty of an offense, every one of you  
15:25:57 20 must agree that the government has overcome the presumption  
15:25:57 21 of innocence with evidence that proves each element of that  
15:26:03 22 offense beyond a reasonable doubt. To find the defendant  
15:26:04 23 not guilty, every one of you must agree that the government  
15:26:07 24 has failed to convince you beyond a reasonable doubt.

15:26:10 25 Third, if you decide that the government has

15:26:13 1 proved the defendant guilty beyond a reasonable doubt, then  
15:26:16 2 it will be my responsibility to decide what the appropriate  
15:26:19 3 punishment should be. You should never consider the  
15:26:23 4 possible punishment in reaching your verdict.

15:26:25 5 Fourth, as I have said before, your verdict must  
15:26:30 6 be based only on the evidence received in the case and the  
15:26:32 7 law I have given you. You should not take anything I may  
15:26:36 8 have said or done during this trial as indicating that I  
15:26:38 9 think -- what I think of the evidence or what I think your  
15:26:41 10 verdict should be. What the verdict should be is the  
15:26:44 11 exclusive responsibility of the jury.

15:26:47 12 Fifth, now that all the evidence is in, the  
15:26:49 13 arguments are complete, and once I finished these  
15:26:51 14 instructions, you are free to talk about the case in the  
15:26:53 15 jury room. In fact, it is your duty to do so and to talk  
15:26:57 16 with each about the evidence, and to make every reasonable  
15:26:59 17 effort you can to reach unanimous agreement. Talk with each  
15:27:03 18 other, listen carefully and respectfully to each other's  
15:27:06 19 views and keep an open mind as you listen to what your  
15:27:09 20 fellow jurors have to say. Do not hesitate to change your  
15:27:12 21 mind if you are convinced that other jurors are right and  
15:27:14 22 that your original position was wrong, but do not ever  
15:27:17 23 change your mind because other jurors see things  
15:27:20 24 differently, or just to get the case over with. In the end,  
15:27:23 25 your vote must be that, your own vote, it is important for

15:27:26 1 you to reach unanimous agreement, but only if you can do so  
15:27:30 2 honestly and in good conscious, listen carefully to what the  
15:27:34 3 other jurors have to say and then decide for yourself if the  
15:27:34 4 government has proved the defendant guilty beyond a  
15:27:34 5 reasonable doubt.

15:27:36 6 No one will be allowed to hear your discussions  
15:36:10 7 in the jury room, and no record will be made of what you  
15:36:10 8 say, so you should all feel free to speak your minds.

15:36:10 9 Remember that if you elected to take notes  
15:36:10 10 during the trial, your notes should be only be used as  
15:36:10 11 memory aids. You should not give your notes greater weight  
15:36:10 12 than your independent recollection of the evidence. You  
15:36:10 13 should rely upon your own independent recollection of the  
15:36:10 14 evidence or lack of evidence and you should not be unduly  
15:36:10 15 influenced by the notes of other jurors, do not give any  
15:36:10 16 more or less weight to the views of a fellow juror just  
15:36:10 17 because a juror did or did not take notes. Do not assume  
15:36:10 18 that just because something is in someone's notes that it  
15:36:10 19 necessarily occurred in court. It is just as easy to write  
15:36:10 20 down something incorrectly as it is to hear or remember it  
15:36:10 21 incorrectly. Notes are not entitled to any more weight than  
15:36:10 22 the memory and impression of each juror.

15:36:11 23 Sixth. Once you start deliberating, do not  
15:36:11 24 talk, communicate with, or provide any other information  
15:36:11 25 about this case by any means to the court officials, or to



15:36:11 1 me, or to anyone else except each other. During your  
15:36:11 2 deliberations, you may not use any electronic device or  
15:36:11 3 media, such as a telephone, cell phone, smart phone, iPhone,  
15:36:11 4 Blackberry or computer; the internet, any internet service,  
15:36:11 5 or any text or instant messaging service; or any internet  
15:36:11 6 chat room, blog, or website such as Facebook, MySpace,  
15:36:11 7 LinkedIn, YouTube, Twitter or X, TikTok, Instagram,  
15:36:11 8 What'sApp or SnapChat, or anything else you can think of to  
15:36:11 9 communicate to anyone any information about this case or to  
15:36:11 10 conduct any research about this case.

15:36:11 11 Seventh. If you have any questions or messages,  
15:36:11 12 your foreperson should write them down on a piece of paper,  
15:36:11 13 sign the piece of paper, and give the piece of paper to the  
15:36:11 14 court official who will then give them to me. I will first  
15:36:11 15 talk with the lawyers about what you have asked and will  
15:36:11 16 respond as soon as I can. In the meantime, if possible,  
15:36:11 17 continue with your deliberations on another subject.

15:36:11 18 You will have exhibits with you in the jury  
15:36:11 19 room. To the extent there are other exhibits, like physical  
15:36:11 20 exhibits that were admitted into evidence that you don't  
15:36:11 21 have, you may send a message to me and if I can legally do  
15:36:11 22 so, I will have the exhibits provided to you.

15:36:11 23 One more thing about messages. Do not ever  
15:36:11 24 write down or tell anyone how you or anyone else voted.  
15:36:11 25 That should stay secret until you have finished your

15:36:11 1 deliberation. If you have occasions to communicate with me,  
15:36:11 2 the Court, while you are deliberating, do not disclose the  
15:36:11 3 number of jurors who have voted to convict or acquit on any  
15:36:11 4 offense.

15:36:11 5 Let me end this section with what I said in the  
15:36:11 6 preliminary instructions. Perform your duties fairly and  
15:36:11 7 impartially. Do not allow sympathy, prejudice, political,  
15:36:11 8 or other beliefs, public opinion, or any other factor other  
15:36:11 9 than the law and the evidence influence your decision.

15:36:11 10 A verdict form has been prepared for you that  
15:36:11 11 you should use to record your verdict. There are three  
15:36:11 12 questions on the verdict form, one for each of the counts.  
15:36:11 13 Take the form with you into the jury room. When you have  
15:36:11 14 reached unanimous verdicts, the foreperson should write the  
15:36:11 15 verdicts on the form, date it, and sign it. I think there  
15:36:12 16 is a space for each of you to sign the form, and then return  
15:36:12 17 -- then you can let us know that you have a verdict. At  
15:36:12 18 that point you'll return to the courtroom where you will  
15:36:12 19 read the verdict out loud.

15:36:12 20 If you decide that the government has proved the  
15:36:12 21 defendant guilty of any or all of the offenses charged  
15:36:12 22 beyond a reasonable doubt, you will say so by having your  
15:36:12 23 foreperson mark the appropriate place on the form guilty.  
15:36:12 24 If you decide the government has not proved the defendant  
15:36:12 25 guilty of some or all of the offenses charged beyond a

15:36:12 1 reasonable doubt, you say so by marking the form in the  
15:36:12 2 appropriate place, not guilty.

15:36:12 3 And I will just remind you when you're looking  
15:36:12 4 at the jury verdict form for each of the counts that is on  
15:36:12 5 there, you should look back to the instructions relating to  
15:36:12 6 those counts in order to see what the law is.

15:36:12 7 Let me finish up by saying something I have said  
15:36:12 8 to you before at the beginning of the case. I think I said  
15:36:12 9 it to you just two minutes ago. Nothing that I have said or  
15:36:12 10 done during this trial was meant to influence your decision  
15:36:12 11 in any way. You have to decide this case for yourselves  
15:36:12 12 based on the evidence presented and the law I have given  
15:36:12 13 you.

15:36:12 14 So that is the end of the instructions. We're  
15:36:12 15 going to bring the jury officer forward. But before I do  
15:36:12 16 that, let me just say, jurors, number 13, 14, and 15, you  
15:36:12 17 are alternate jurors. You are here in case during the  
15:36:12 18 deliberations any of jurors numbers 1 through 12 are unable  
15:36:12 19 to continue. So you are not going to deliberate at this  
15:36:12 20 point. Instead, Mr. Buckson or Ms. Smith will take you into  
15:36:12 21 a different place in the courthouse where you can wait for a  
15:36:12 22 while. I don't want to send you home because then we waste  
15:36:12 23 time if it turns out that we need you to come back. So  
15:36:12 24 we'll find you a more comfortable room where you can stay.

15:36:12 25 Mr. Buckson will collect your notes and put them

15:36:12 1 in a sealed envelope to the extent that you are called upon  
15:36:12 2 and need them, you will then get them back. And the other  
15:36:12 3 twelve jurors at this point will go back and begin their  
15:36:12 4 deliberations.

15:36:12 5 So let's have the Jury Officer come forward.

15:36:12 6 COURTROOM DEPUTY: Please raise your right hand.

15:36:12 7 Do you solemnly swear that you will keep this jury in some  
15:36:12 8 quiet and convenient place, that you will not suffer anyone  
15:36:12 9 to speak to them nor speak to them yourself touching the  
15:36:13 10 issue before them unless it be to ask them if they have  
15:36:13 11 agreed upon their verdict.

15:36:13 12 JURY OFFICER: I do.

15:36:13 13 THE COURT: All right. You have may go back to  
15:36:13 14 the jury room.

15:36:13 15 COURTROOM DEPUTY: All rise.

15:36:13 16 (Jury exiting the courtroom at 3:33 p.m.)

15:36:13 17 THE COURT: All right. Anything we need to  
15:36:13 18 address?

15:36:13 19 MR. HINES: I don't think so, judge.

15:36:13 20 MR. LOWELL: I don't see that there was a  
15:36:13 21 sentence, I don't think there was for those alternates,  
15:36:13 22 they're not supposed to be deliberating among the three of  
15:36:13 23 them. I don't think it matters, but I forgot once you said  
15:36:13 24 it.

15:36:13 25 THE COURT: If you want, I can instruct them of

15:36:13 1 that.

15:36:13 2 MR. LOWELL: What's your normal practice?

15:36:13 3 THE COURT: I don't -- I haven't ever done that  
15:36:13 4 before because I always assume that they don't talk to  
15:36:13 5 anyone still applies to them.

15:36:13 6 MR. LOWELL: You can do that, I just wanted to  
15:36:13 7 raise that.

15:36:13 8 THE COURT: All right. And then how do you want  
15:36:13 9 handle, what I usually do with the jurors is I tell them if  
15:36:13 10 you want to leave at 4:30, you can tell us, if you think you  
15:36:13 11 want to keep deliberating, you can tell us. But usually I  
15:36:13 12 just let them leave. Do you want me to do anything  
15:36:13 13 different and say remember you can't talk to anybody? What  
15:36:13 14 is it that you want to do?

15:36:13 15 MR. HINES: Nothing different. We think that  
15:36:13 16 the Court's ordinary practice is fine.

15:36:13 17 THE COURT: Okay. And then in the morning when  
15:36:13 18 they come in, is that you want me to follow that same  
15:36:13 19 practice. Normally I would just let them -- when they get  
15:36:13 20 here and they are deliberating, as soon as all of the jurors  
15:36:13 21 are there to deliberate, I let them begin deliberating  
15:36:13 22 without bringing them back into the courtroom or anything.

15:36:13 23 MR. HINES: That's fine with us.

15:36:13 24 MR. LOWELL: It would be overkill I think at  
15:36:13 25 this point after how many times you have given them that

15:36:13 1 instruction, so we have to assume they'll follow your  
15:36:13 2 instruction.

15:36:13 3 THE COURT: Thank you. We'll let you know if we  
15:36:13 4 get any questions or anything. Usually you can just hang  
15:36:13 5 out for a little while so that we -- in case something  
15:36:13 6 quickly comes up.

15:36:13 7 MR. LOWELL: Okay.

15:36:13 8 COURTROOM DEPUTY: Court is adjourned.

15:36:13 9 (Court adjourned at 3:36 p.m.)

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I hereby certify the foregoing is a true and  
accurate transcript from my stenographic notes in the proceeding.

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/s/ Dale C. Hawkins  
Official Court Reporter  
U.S. District Court

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