No. 18-1482

In the Supreme Court of the United States

SEMYYA LANISE CUNNINGHAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in finding that statements made by a fraud victim to her mother and a fraud investigator had circumstantial guarantees of trustworthiness that justified admission of the statements under Federal Rule of Evidence 807.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Va.):

United States v. *Cunningham*, 17-cr-177 (Sept. 7, 2018)

United States Court of Appeals (4th Cir.):

United States v. *Cunningham*, 18-4664 (Feb. 27, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is not published in the Federal Reporter but is reprinted at 761 Fed. Appx. 203. The order of the district court (Pet. App. 17a-23a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 2019. The petition for a writ of certiorari was filed on May 28, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted on two counts of mail fraud, in violation of 18 U.S.C. 1341; one count of wire fraud, in violation of 18 U.S.C. 1343; and two counts of engaging in mone-

tary transactions in property derived from crime, in violation of 18 U.S.C. 1957. Judgment 1-2. The district court sentenced petitioner to 24 months of imprisonment, to be followed by three years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-13a.

1. a. Petitioner, an insurance agent, sold a life-insurance policy to her friend Kourtnee Green in April 2014. Pet. App. 2a; C.A. App. 119. The policy provided an "accelerated death benefit," which meant that Green could receive a portion of the insurance proceeds before her death if she was ever diagnosed with a terminal illness. Pet. App. 2a-3a. Green designated her mother and brother as the policy beneficiaries. *Id.* at 3a.

In July 2014, Green was diagnosed with terminal cancer and moved in with her mother, who cared for her until her death. Pet. App. 3a. After Green's diagnosis, petitioner changed the contact information on Green's insurance policy to her own contact information, thereby ensuring that she, not Green, would receive all future communications about the policy. *Ibid.*; C.A. App. 246-247. Petitioner also called the insurance company's customer-service representative, told the representative that Green lived at petitioner's home address, and directed the representative to mail paperwork for filing a claim to petitioner's address. Gov't C.A. Br. 12. In October 2014, petitioner submitted a claim for payment on Green's accelerated death benefit. Pet. App. 3a. Petitioner also changed the policy beneficiaries from Green's mother and brother to two of petitioner's own friends, who knew Green only peripherally. *Ibid.*

In January 2015, the insurance company paid the accelerated death benefit claim by mailing a check for more than $180,000 to petitioner's home address. Gov't

C.A. Br. 16. Petitioner deposited the check into Green's bank account, but used a personal check drawn on that account to transfer the funds into her own account. *Id.* at 17; C.A. App. 564-568, 977. In the days that followed, petitioner spent over $10,000 on flat-screen televisions, videogame consoles and videogames, clothing, restaurants, and cash withdrawals. Gov't C.A. Br. 18; C.A. App. 977.

b. Green's mother, who was helping to manage Green's finances, noticed the deposit and withdrawal from Green's account and asked Green about those transactions. Pet. App. 3a. Green told her mother that she did not know the source of the deposit or the reason she had received the funds, and that she neither wrote nor provided a check to petitioner. *Ibid.* Green's mother called the insurance company and alleged that petitioner had committed fraud on Green's insurance policy. *Id.* at 3a-4a. At the beginning of the call, Green's mother identified herself by her own name, but failed to correct the customer-service representative who mistakenly thought that she was talking to Green. *Id.* at 21a-22a; C.A. App. 302-304. Green was near her mother while the call was made, and her mother thought it was unimportant to correct the customer-service representative because she was acting on Green's behalf and at her request while Green was in a weakened condition. Pet. App. 21a-22a.

A fraud investigator for the insurance company interviewed Green and her mother by phone. Pet. App. 4a. Green told the investigator that she did not change the contact information or beneficiaries on her insurance policy, that the new beneficiaries were friends of petitioner's, and that she did not submit a claim for the

accelerated death benefit or transfer the benefits to petitioner. *Ibid.* Green signed affidavits attesting to forgery, which she submitted to her bank and insurance company, and she later confirmed her allegations of forgery in an interview with the police. *Ibid.*

c. In March 2015, Green changed the beneficiaries on her policy back to her mother and brother and submitted a claim for the accelerated death benefit, which the insurance company paid. Pet. App. 4a. Green and her mother spent a portion of the insurance proceeds on Green's medical bills, a handicap-accessible shower in which Green could be bathed by her mother, and the cost of Green's funeral. C.A. App. 306-307. The rest of the money was put into a trust for Green's nieces and nephews. *Id.* at 307. Six months after receiving the insurance benefit, Green died of cancer. Pet. App. 4a.

2. A federal grand jury in the Eastern District of Virginia returned an indictment charging petitioner with two counts of mail fraud, in violation of 18 U.S.C. 1341; one count of wire fraud, in violation of 18 U.S.C. 1343; and two counts of engaging in monetary transactions in property derived from crime, in violation of 18 U.S.C. 1957. Pet. App. 5a.

a. Because Green died before the indictment, she was unavailable to testify at trial. Pet. App. 5a. The government moved in limine to admit Green's prior statements to her mother and the investigator about her intentions for the distribution of her life-insurance policy benefits. *Id.* at 17a. Specifically, the government sought to introduce (i) through Green's mother, Green's statements that she did not know the source of the deposit into her account or the reason she was receiving funds from the insurance company, and that she did not write or provide a check to petitioner; and (ii) through

the investigator, Green's statements that she did not change the contact information or beneficiaries on her policy, that the new beneficiaries were friends of petitioner, and that she did not submit a claim for the accelerated death benefit or transfer the proceeds to petitioner. *Id.* at 3a-4a.

In its motion, the government relied on Federal Rule of Evidence 807, the residual hearsay exception. Under Rule 807, a statement is admissible even if it is not covered by one of the hearsay exceptions in Rules 803 and 804, so long as: (1) "the statement has equivalent circumstantial guarantees of trustworthiness"; (2) "it is offered as evidence of a material fact"; (3) "it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts"; and (4) "admitting it will best serve the purposes of [the Federal Rules of Evidence] and the interests of justice." Fed. R. Evid. 807(a).

The district court issued a pretrial order in which it determined that Green's statements were admissible under Rule 807, and provided a full explanation of that determination in a written post-trial order. Pet. App. 5a, 14a-16a, 17a-23a. As an initial matter, the court found that the statements had circumstantial guarantees of trustworthiness equivalent to those in "the hearsay exceptions [in] Rules 803 and 804." *Id.* at 20a. Analyzing "[t]he circumstances in which the statements were made," the court explained that Green made the statements to her mother in their mutual home while her mother was caring for her as she battled cancer, and that the two had a close relationship. *Ibid.* The court likewise found that Green made her statements to the investigator in circumstances that indicate trustworthiness. *Ibid.* The court observed that Green made the

statements for the purpose of notifying the insurance company of a problem with her benefits. *Ibid.* The court noted that Green had an incentive to speak truthfully to the investigator, both because she sought to ensure that the correct beneficiaries would receive the insurance proceeds, and because lying could have led to denial of benefits or sanctions under state or federal law. *Ibid.*

The district court rejected petitioner's argument that Green had lied about her intentions out of fear that her mother would stop caring for her. Pet. App. 20a-21a. The court observed that petitioner had presented no evidence in support of that theory and that the evidence showed that Green "was an adult woman who was willing and able to contradict her mother." *Id.* at 21a. The court also rejected petitioner's argument that Green's mother had "impersonated" Green the first time she called the insurance company, and that the statements to the investigator could therefore have been made by the mother pretending to be Green and not by Green herself. *Id.* at 21a-22a. The court explained that the investigator was always careful to verify that she was speaking to Green and that, as evidenced by the court's own review of audio recordings, Green and her mother had distinct voices and the investigator could easily tell them apart. *Id.* at 22a.

Turning to the other Rule 807(a) criteria, the district court found that the statements made by Green about her intent for the proceeds of her life-insurance policy were material to the case and that Green's statements were more probative of that question than any other evidence obtainable through reasonable efforts because Green had died and no other witness besides petitioner had direct knowledge of Green's intent. Pet. App. 22a.

The court also found that admitting Green's statements under Rule 807 served the purposes of the Federal Rules of Evidence and the interests of justice. *Id.* at 21a. The court observed that other evidence corroborated Green's statements—namely, that she had submitted forgery affidavits to the insurance company attesting that she did not change the beneficiaries on her insurance policy, request the accelerated death benefit, or authorize anyone else to do those things; had submitted a fraud affidavit to the bank; and had repeated her statements in a recorded interview with local police in Arizona. *Ibid.*

b. Green's statements were presented at trial through the testimony of Green's mother and the investigator. Pet. App. 5a. The jury found petitioner guilty on all counts. *Ibid.* The district court sentenced her to 24 months of imprisonment, to be followed by three years of supervised release. Judgment 3-4.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. 1a-13a. On appeal, petitioner challenged only the district court's determination that Green's statements to her mother and the investigator had "circumstantial guarantees of trustworthiness" sufficient to support their admission under Rule 807. *Id.* at 7a; see Fed. R. Evid. 807(a). The court of appeals determined that the context in which Green made her statements contained circumstantial guarantees of trustworthiness and that, accordingly, the district court did not abuse its discretion in admitting them. Pet. App. 7a.

The court of appeals rejected petitioner's argument that the district court erred by discounting petitioner's version of events. Pet. App. 10a. According to petitioner, Green gave her insurance benefits to petitioner, lied to her mother because it would have been awkward

to admit that she had decided to give her insurance benefits to someone else, and then maintained that lie in statements to the investigator. *Ibid.* The court of appeals observed that the district court had considered petitioner's arguments and explained its reasons for determining that "[petitioner's] account was not as credible as" the mother's or the investigator's. *Ibid.* The court of appeals found that the district court had not abused its discretion in doing so. *Ibid.*

The court of appeals also rejected petitioner's argument that the district court had erred by considering Green's relationship with her mother and the intimate setting in which the statements were made (their mutual home) as circumstantial guarantees of trustworthiness. Pet. App. 10a-11a. The court of appeals explained that the district court did not rely on the close relationship alone to establish trustworthiness and that it was not improper for the court to consider the nature of Green's relationship with her mother as one fact among many to assess the trustworthiness of Green's statements. *Id.* at 11a.

The court of appeals next rejected petitioner's argument that the district court should not have admitted Green's statements because cross-examination of Green would have been of more than marginal utility and would have revealed that Green's true intention was to give the insurance proceeds to petitioner. Pet. App. 11a. The court of appeals explained that the usefulness of cross-examination is only one indicium of trustworthiness, and that Green's unavailability for cross-examination "does not by itself provide a basis on which to find that the district court abused its discretion by admitting the statements." *Id.* at 12a.

Finally, the court of appeals rejected petitioner's argument that the district court erred by relying on corroborating evidence to establish the trustworthiness of Green's statements. Pet. App. 12a. The court of appeals explained that the district court had "anchored its findings in the specific circumstances surrounding each of the statements—not the statements' consistency with other evidence in the case." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 13-18) that the court of appeals improperly rested its conclusion that Green's statements had circumstantial guarantees of trustworthiness on its belief in the truth of Green's statements and on its assessment of the credibility of the witnesses to whom those statements were made. The court of appeals correctly affirmed the district court's decision to admit Green's hearsay statements, and its unpublished decision does not conflict with any decision of this Court or another court of appeals. Further review is therefore unwarranted.

1. a. Federal Rule of Evidence 807, which sets forth the residual hearsay exception, "accommodates ad hoc instances in which statements not otherwise falling within a recognized hearsay exception might nevertheless be sufficiently reliable to be admissible at trial." *Idaho* v. *Wright*, 497 U.S. 805, 817 (1990). The rule provides that "a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804" under the following circumstances: (1) "the statement has equivalent circumstantial guarantees of trustworthiness"; (2) "it is offered as evidence of a material fact"; (3) "it is more probative on the point for which it is offered than any other evidence that the proponent

can obtain through reasonable efforts"; and (4) "admitting it will best serve the purposes of [the Federal Rules of Evidence] and the interests of justice." Fed. R. Evid. 807(a).

This Court has "decline[d] to endorse a mechanical test for determining 'particularized guarantees of trustworthiness'" in the parallel context of the Confrontation Clause, U.S. Const. Amend. VI, recognizing that trial courts "have considerable leeway in their consideration of appropriate factors." *Wright*, 497 U.S. at 822. Accordingly, courts consider many factors to determine whether a hearsay statement is sufficiently trustworthy for purposes of admission under Rule 807—for example, "the probable motivation of the declarant in making the statement," the circumstances under which the statement was made, the qualifications of the declarant, and the existence of corroborating evidence, *United States* v. *Hall*, 165 F.3d 1095, 1110-1111 (7th Cir.) (citation omitted), cert. denied, 527 U.S. 1029 (1999); the incentives the declarant had to speak truthfully, *United States* v. *Bailey*, 581 F.2d 341, 349 (3d Cir. 1978); any circumstances rendering the declarant particularly worthy of belief, *United States* v. *Barrett*, 8 F.3d 1296, 1300 (8th Cir. 1993); whether the declarant had a clear motivation to lie, *United States* v. *McCraney*, 612 F.3d 1057, 1062 (8th Cir. 2010), cert. denied, 563 U.S. 905 (2011); and whether the statement concerned facts of which the declarant had personal knowledge, *United States* v. *Earles*, 113 F.3d 796, 800 (8th Cir. 1997), cert. denied, 522 U.S. 1075 (1998).

b. In this case, the courts below correctly found that the circumstances under which Green's statements were made guaranteed the statements' trustworthiness. With respect to Green's statements to her mother, the

district court identified the circumstances in which the statements were made—namely, "after learning that her bank account contained a deposit of approximately $180,000, and after subsequently learning that the money had been removed from the account via a check made payable to [petitioner]." Pet. App. 18a. The court found that Green's statements at those moments to her mother, with whom she shared a close relationship and a home while battling cancer, were likely to be trustworthy. *Id.* at 20a.

And with respect to Green's statements to the investigator, the district court again identified the circumstances in which the statements were made—namely, a phone call with an investigator after learning that her life-insurance company had deposited a large amount of money into her bank account. Pet. App. 18a. The court found that Green "had an incentive to speak truthfully to [the investigator] to ensure the proceeds of her life insurance policy were given to the beneficiary of her choice" and to avoid the denial of benefits or sanctions under state or federal law. *Id.* at 20a. The court properly analyzed the circumstances in which Green's statements were made to assess their trustworthiness, and its assessment of those circumstances does not amount to an abuse of discretion. *Id.* at 6a, 7a (citing *United States* v. *Shaw*, 69 F.3d 1249, 1254-1255 (4th Cir. 1995)).

c. Petitioner's objections to the court of appeals' decision rest on a misreading of that court's and the district court's opinions. According to petitioner (Pet. 16), the courts below admitted Green's hearsay statements because they believed those statements to be true. That is incorrect. The district court identified the circumstances in which the relevant statements were made, Pet. App. 18a, and determined that, in those moments,

a declarant would be likely to tell the truth—both to a person with whom the declarant shared a home and a "close relationship" after discovering surprising transactions in a bank account, and to an insurance company representative who was trying to determine the policyholder's intentions with respect to her insurance benefits, *id.* at 20a.

The district court, moreover, considered the additional "circumstances" that petitioner suggested—*i.e.*, petitioner's theory that Green had lied to her mother about giving the insurance proceeds to petitioner and then became locked into that lie after her mother called the insurance company to allege fraud. See Pet. 17. The court appropriately determined that petitioner had not presented any evidence that those were additional "circumstances" that the court should have considered. Pet. App. 20a-21a. The court did not reject petitioner's argument because it was convinced of the actual truth of Green's hearsay statements. Rather, the court made clear that it was evaluating whether Green had any "*motivation to lie* to either [her mother or the investigator] about whether [she] intended [petitioner] to receive the insurance benefits," and it found that she did not. *Id.* at 20a (emphasis added).

Petitioner's fact-specific challenges (Pet. 17-18) to the district court's case-specific findings do not warrant this Court's review. See Sup. Ct. R. 10. Petitioner contends (Pet. 17) that a close personal relationship between the declarant and the listener does not guarantee trustworthiness where the statement concerns insurance proceeds, because it will be difficult for the declarant to tell the truth if she has given the insurance proceeds to someone outside the family. Petitioner further contends (*ibid.*) that the court's explanation

for the trustworthiness of Green's statements to the investigator—that Green had an incentive to be truthful so that the insurance proceeds would be given to Green's chosen beneficiary—does not hold up if Green had been forced by her mother to lie about her true intentions. This Court, however, typically "do[es] not grant * * * certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see, *e.g.*, *Exxon Co.* v. *Softec, Inc.*, 517 U.S. 830, 841 (1996) (noting this Court's reluctance to review fact findings by two lower courts).

2. a. Contrary to petitioner's contention (Pet. 9-13), the court of appeals' unpublished decision does not conflict with the Eleventh Circuit's decision in *Rivers* v. *United States*, 777 F.3d 1306, cert. denied, 136 S. Ct. 267 (2015). As an initial matter, the court's unpublished decision is "not binding precedent." Pet. App. 2a. It thus cannot create a conflict among the circuits.

In any event, the court of appeals' decision does not conflict with the Eleventh Circuit's decision in *Rivers*. In *Rivers*, the district court invoked Rule 807 to admit hearsay recounted by a lawyer, in part on the ground that the lawyer, "as an officer of the Court, would not proffer any false testimony." 777 F.3d at 1310. The Eleventh Circuit concluded that that the district court should not have analyzed the lawyer's credibility to determine whether the declarant's hearsay statement was likely to be trustworthy. The Eleventh Circuit explained that "a Rule 807 analysis must consider whether the declarant's original statements now being offered in court have guarantees of trustworthiness given the circumstances under which they were first made," and "[t]he fundamental question, therefore, is not the trustworthiness of the witness reciting the statements in

court, but of the declarant who originally made the statements." *Id.* at 1313.

The decision below is consistent with that rule. Neither the district court nor the court of appeals relied on a finding regarding the credibility of Green's mother or the insurance investigator. Rather, the admission of the testimony rested on assessment of the circumstances in which Green made her statements. Petitioner contends (Pet. 6-7) that, in its oral ruling, the district court noted that it "accept[ed]" and "believe[d]" testimony from the government's witnesses. *Ibid.* (quoting Pet. App. 15a-16a) (brackets in original). The court, however, made those remarks in the course of addressing one of petitioner's arguments—namely, that Green's mother had previously impersonated Green, and that the statements to the investigator may actually have been made by the mother rather than by Green. The court "accept[ed]" the mother's testimony about why she identified herself as Green on a call to the insurance company, and "believe[d]" the investigator's testimony that she could tell apart Green's and her mother's voices. Pet. App. 15a-16a. The court's assessment of witness credibility for purposes of determining the existence of a particular *circumstance*—that Green herself made the statements—that in turn informed the Rule 807 inquiry is not the same as relying on witness credibility to determine whether the statements *themselves* were trustworthy, which was the issue in *Rivers*.

Petitioner also highlights the court of appeals' statement that the district court had considered petitioner's version of events, but "determine[d] that [petitioner's] account was not as credible as [the mother's] or [the investigator's]." Pet. 7-8 (quoting Pet. App. 10a). Again, however, the court of appeals did not make that remark

in the course of setting out the circumstantial guarantees of trustworthiness that affirmatively justified the admission of the statements. See Pet. App. 10a. Rather, the court made that remark in the course of discussing another of petitioner's arguments—the argument "that the district court should have accepted her version of events," under which Green gave her insurance benefits to petitioner but lied to her mother and the investigator, as the relevant background circumstances from which trustworthiness should be assessed. *Ibid.* The court of appeals simply pointed out that the district court had determined that "[petitioner's] account was not as credible as" Green's account of her own intentions, as relayed by Green's mother and the investigator. *Ibid.* Neither the court of appeals nor the district court engaged in the practice that the Eleventh Circuit forbade in *Rivers*: finding a statement trustworthy simply because the witness who relayed that statement is trustworthy.

b. Petitioner also contends (Pet. 11) that the Eleventh Circuit's decision in *Rivers* conflicts with the Third Circuit's forty-year-old decision in *Bailey*, *supra*. But that asserted conflict does not justify granting a writ of certiorari in *this* case, which, as just explained, does not conflict with *Rivers* or the decision of any other court of appeals. In any event, petitioner overstates the conflict between *Bailey* and *Rivers*. In *Bailey*, the Third Circuit stated that "consideration should be given to factors bearing on the reliability of the reporting of the hearsay by the witness." 581 F.2d at 349. The Third Circuit, however, did not actually analyze the credibility of the reporting witness in that case. *Id.* at 345, 350. Rather, the court discussed the circumstances under

which the declarant provided his statement to the reporting witness and determined that those circumstances did "not inspire confidence in its reliability." *Id.* at 350.

Petitioner cites (Pet. 11-12) two unpublished district court opinions relying on *Bailey* and discussing the credibility of the reporting witness. But in each of those cases, the court had already determined that the hearsay statements at issue lacked circumstantial guarantees of trustworthiness before discussing the credibility of the reporting witness. See *United States* v. *Manfredi*, No. 07-352, 2009 WL 3823230, at *3 (W.D. Pa. Nov. 13, 2009) (describing circumstances of hearsay statement and determining that "the trustworthiness of the proffered statement is not as reliable as those statements which are admitted as exceptions to the hearsay rule"); *Pecorella-Fabrizio* v. *Boheim*, No. 08-cv-348, 2011 WL 5834951, at *5 (M.D. Pa. Nov. 16, 2011) (determining that a hearsay statement was not admissible under Rule 807 based on factors identified in Third Circuit case law before considering whether the witness reporting the hearsay may have been biased). And even assuming that a district court in the Third Circuit might have taken an approach that the Eleventh Circuit might reject, that would not be a sound reason for further review in this case.

3. Nor does the question presented warrant this Court's review more generally. Petitioner all but acknowledges (Pet. 21-23) that the question presented is of diminishing importance because of proposed changes to Federal Rule of Evidence 807 that are set to take effect on December 1, 2019. First, the amendments make clear that a court may consider corroborating evidence

when determining whether a hearsay statement is supported by sufficient guarantees of trustworthiness to be admitted at trial under the residual hearsay exception. See Supreme Court of the United States, *Proposed Amendments to the Federal Rules of Evidence* (Apr. 25, 2019), https://go.usa.gov/xywyY. That amendment thus indicates, contrary to petitioner's argument in this case, that a court should examine the trustworthiness of the statement itself, and not simply the circumstances in which it was made, to determine whether evidence should be admitted under Rule 807. A decision from this Court interpreting the current version of Rule 807 would therefore be of limited prospective value.

Second, as petitioner acknowledges (Pet. 22-23), the Advisory Committee Notes accompanying the amended Rule explain that, "[i]n deciding whether the statement is supported by sufficient guarantees of trustworthiness, the court should not consider the credibility of any witness who relates the declarant's hearsay statement in court." U.S. Courts, *Summary of the Report of the Judicial Conference Committee on Rules of Practice and Procedure: Proposed Amendments to the Federal Rules of Evidence*, App. D-4 (Sept. 2018), https://go.usa.gov/xywy2. That clarification may assist in resolving any confusion on that point in the Third Circuit going forward.

4. Finally, this case would be an unsuitable vehicle for addressing the question presented because any error in admitting Green's statements was harmless. See Fed. R. Crim. P. 52(a). Petitioner asserts (Pet. 23) that the district court's decision to admit Green's hearsay statements was "outcome-determinative at trial." But the government presented overwhelming evidence of

petitioner's guilt, separate and apart from Green's statements, leaving no doubt about the fraud.

Petitioner repeatedly lied in recorded calls to representatives of the insurance company, falsely telling a customer-service representative that Green lived at petitioner's address, and falsely telling the company's chief compliance officer that Green had been friends with one of the new beneficiaries for eight years. Gov't C.A. Br. 21-22. Petitioner also took numerous steps that lack any innocent explanation. She changed the contact information on Green's policy to her own information, even though, as the agent who wrote the policy, petitioner already would have automatically received copies of all correspondence relating to Green's policy. C.A. App. 686-687. Petitioner also changed the beneficiaries on Green's policy to her own friends, whom petitioner barely knew. Gov't C.A. Br. 14-15. Furthermore, after petitioner transferred the insurance proceeds to her own bank account, she performed a series of financial transactions to move the money between different accounts, and engaged in a spree of frivolous spending. *Id.* at 17-18; C.A. App. 564-568, 977.

Moreover, after learning of petitioner's actions, Green attempted to reverse the fraud by contacting the bank, the insurance company, and the police. Pet. App. 4a. She changed the beneficiaries back to her mother and brother, submitted a claim for the accelerated death benefit, and used the money for end-of-life costs. *Ibid.*; C.A. App. 306-307. All of that evidence, in combination, proved to the jury, beyond a reasonable doubt, that petitioner knowingly devised and carried out a scheme to fraudulently obtain Green's life-insurance proceeds. Any error in admitting Green's statements

was therefore harmless, and further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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