No. 24-

IN THE

Supreme Court of the United States

ANTHONY PANDRELLA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the robbery of a loanshark could have an effect on interstate commerce sufficient to establish federal jurisdiction under the Hobbs Act (18 U.S.C. § 1951) even where the victim had withdrawn from the loansharking business prior to the robbery?

LIST OF PARTIES

All parties to this proceeding appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

- United States Court of Appeals for the Second Circuit: *United States v. Anthony Pandrella*, No. 22-2712-cr (April 8, 2024)

- United States District Court for the Eastern District of New York: *United States v. Anthony Pandrella*, No. 19-CR-122(MKB) (April 27, 2023)

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OPINION BELOW

The unpublished Summary Order of the United States Court of Appeals for the Second Circuit, *United States v Pandrella*, No 22-2712-cr, 2024 U.S. App. LEXIS 8381; 2024 WL 1506969 (2d Cir. Apr. 8, 2024) is reproduced as Appendix A.

The District Court's unreported June 13, 2022, decision denying Petitioner's Fed. R. Crim. P. 29 motion in *United States v. Anthony Pandrella*, No. 19-CR-122(MKB) is reproduced as Appendix B.

JURISDICTION

The Judgment of the United States Court of Appeals was entered on April 8, 2024. On June 18, 2024, an Application was granted by Justice Sotomayor extending the time to file this Petition until September 5, 2024. The Petition is timely and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Article 1, Section 8, Clause 3:

> The Congress shall have the power . . . To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes;

U.S. Constitution, Amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

18 U.S.C. Section 1951:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years or both.
>
> (b) As used in this section—
>
> > (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

> (2) The term "extortion" means the unlawful taking or obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear or under the color of official right.
>
> (3) The term "commerce" means commerce within the District of Columbia, or any territory or Possession of the United States, all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

STATEMENT

Petitioner Anthony Pandrella ("Pandrella or Petitioner"), age 65, was charged in a three-count Indictment with a Hobbs Act robbery (18 U.S.C. § 1951(a)), discharging a firearm during and in relation to the robbery (18 U.S.C. § 924(c)(1)(a)), and using a firearm to "knowingly and intentionally cause the death of a person . . . in the perpetration of [said] robbery" (18 U.S.C. § 924(j)). (A29-32)[1] After a six-day jury trial in the United States District Court for the Eastern District of New York, Pandrella was convicted on all counts and sentenced to a total term of 30 years imprisonment. (A291)

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1. Citations to "A_" refer to the Appendix filed by Petitioner in the United States Court of Appeals for the Second Circuit.

According to the evidence presented by the government, on October 26, 2018, 77-year-old Vincent Zito ("Zito") was found dead on the floor of his second-story living room in Brooklyn by his grandson. (A35, 38-39) The grandson immediately alerted Zito's niece who lived with her teenage son on the first floor of the house, and the authorities were summoned to the scene. (A49, 52) Arriving at the scene, emergency personnel ultimately discovered a gunshot wound to Zito's head and a .38 caliber revolver on the ground between his legs. (A54).

These discoveries marked the beginning of a long day in which the Zito House was divided between members of NYPD and a sizeable throng of bystanders—including Pandrella, members of the Zito family and "half of [the Sheepshead Bay] neighborhood." (A63) The throng of bystanders had the better part of this arrangement—enjoying free rein over every part of the property except the two second-floor rooms that NYPD crime-scene investigators—who initially assumed Zito had died by suicide—grudgingly designated a "crime scene." (A80-81, 87-88, 144-45)

Although nearly five months would pass before federal charges were brought against Pandrella—it was the NYPD's investigation on October 26 that recovered an object that became the focal point for a federal prosecution. Namely, a display case for wrist watches which sat empty on a bureau in an adjacent dressing room on the second-floor of the Zito household. (A39-40, 108-09) The display case's significance was symbolic. The government contended that Panderella "grabbed" four watches from the case as he fled the Zito's house following the murder. (A37) This allegation—which the government framed

as a theft of assets from Zito's loansharking business—served as the jurisdictional basis for the federal murder prosecution against Pandrella.[2]

Despite the robbery charge's jurisdictional ramifications, the prosecution focused most of its attention at trial on establishing Pandrella's opportunity and motive to kill Zito. The undisputed testimony at trial was that Pandrella had been Zito's "best friend" for decades, and that there had been nothing unusual about Pandrella visiting with and bringing Zito breakfast in the morning. (A62, 103, 217) The relationship between Pandrella and Zito was a focal point of the defense, which argued that Pandrella would never have " kill[ed] his best friend of 30 years" over "wristwatches." (A24) The government did not dispute this argument at trial. Indeed, in closing, the government stressed that "no one has ever suggested" the defendant "kill[ed] his best friend of 30 years to rob a few wristwatches from his house."[3] (A266)

Instead, the government argued that Pandrella's motive for the murder was a financial dispute that had poisoned their friendship in the final months of Zito's life. Zito's son Joseph recounted for the jury his perception of

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2. The owner of these watches was not Zito. Rather, they belonged to government witness, Yuriy Zayonts ("Zayonts"). According to Zayonts, the watches were being held by Zito—at Zayonts' insistence—as collateral for a $50,000 interest-free loan he had received from Zito in the Summer of 2018. (A226-27)

3. To further emphasize the point, the prosecutor then told the jury that: "I want to [make] this absolutely clear: No one [from the government] is arguing that the defendant killed Vincent Zito for the purpose of stealing watches." (A267)

the falling out between the two. According to Joseph, his father, concerned about law enforcement scrutiny and cash he had accumulated over the years, gave these monies to Pandrella to hold for safekeeping in the year 2017. (A150) And when Zito later learned that the money—$750,000—had gone "missing,' he was "livid" with Pandrella. (A150-51)

The evidence that Zito's killer had also committed a theft of watches on October 26, 2018, was slim and equivocal. For one thing, NYPD crime scene investigators found Zito's body adorned with jewelry and flush with cash. (A89, 91) And none of the government's witnesses—not even those who lived with Zito—could confirm that any wrist watches remained in Zito's possession on the day preceding the murder. (A207, 215, 232). In any event, these shortcomings were minor when compared to the government's inability to connect the alleged theft of the watches to any ongoing loansharking by Zito at the time of his death.

Significantly, the government explained to the jury in its opening that: "Vincent Zito was in the business of loaning money, and for many years he put out street loans or what's sometimes called loansharking. He was not a licensed lender, he earned a profit by loaning out money and charging points. . . . " (A35-36). The government introduced ample evidence at trial that in the years before Zito's death he had a thriving loansharking business. But the relevant and indisputable evidence was that in 2018 Zito: was 77 years old, in poor health, and did not want to be in the loansharking business any longer. But, he did "let some friends borrow money without interest." (A36, 233, 244, 265)

Zito's withdrawal from the loansharking business had been so complete in the year of his death—2018—that the government failed to identify *even one* instance where Zito had provided a loanshark loan that year. To the extent that Zito loaned any money in 2018 he did so to friends and on a strictly *interest-free basis*. (A158, 211-12) Even the loan he made in 2018 to Yuriy Zayonts—the owner of the four watches that Zito had been holding as collateral at the time of his death—was interest free—and not a loanshark loan. (A158, 211-12). Indeed, during questioning by the government, Zayonts himself testified that the reason he had offered the watches as collateral to Zito was because Zito's interest free loan to him "wasn't business," and he felt it had been the "right thing to do" in return. (A226-27)

REASON FOR GRANTING THE WRIT

This Court has previously recognized the fundamental proposition that:

> The Constitution requires a distinction between what is truly national and what is truly local. In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. Indeed, we can think of no better example of the police power, which the Founders denied The National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.

United States v. Morrison, 529 U.S. 598, 617-18 (2000) (internal citations omitted).

In a Hobbs Act prosecution, "[t]he charge that interstate commerce is affected is critical since the Federal Government's jurisdiction of this crime rests only on that interference." *Stirone v. United States*, 361 U.S. 212, 218 (1960). Here, that interference was lacking.

The Second Circuit Court of Appeals upheld Petitioner's conviction based on a finding that "the jury could reasonably conclude that stealing the watches depleted [Zito's] loansharking business's assets, which had at least a *de minimis* effect on interstate commerce."[4] (Appendix A, p.6a) The Court of Appeals made this finding even though there was no evidence presented that Zito was still in the business of "loansharking" at the time of his death, or that he would ever extend another loanshark loan again.

In order to establish prima facie evidence that an extension of credit is extortionate or a "loanshark" loan under 18 U.S.C. § 891, the interest rate on the loan must be greater than 45 percent per year. 18 U.S.C. § 892(b)(2). So any zero-interest loan made by Zito the year of his death was, by definition, not a loanshark loan. Nor was it even

4. In the Summary Order, the Court of Appeals also referenced a witness' testimony "that he had borrowed money from Zito to purchase drywall materials" for his construction business that were manufactured out of state by "National Gypsum." (Appendix A, p.6a) The loan to this or any other individual claiming to have used Zito loanshark loans to purchase goods out of state was made, and goods purchased, a number of years before Zito's death in 2018.

a money making endeavor or business. See e.g., *Taylor v United States*, 579 U.S. 301, 306-07 (2016) (describing a "business" as "a money making endeavor"). Thus, there was no interference with or effect upon interstate commerce introduced with respect to a loansharking business—whether slight, subtle or even potential—sufficient to enable a prosecution for a robbery under the Hobbs Act here.

In reality, there was nothing to distinguish the robbery alleged from the garden variety state law reserved version. The failure of this Hobbs Act charge also triggers the reversal of Petitioner's conviction on the remaining two counts of the Indictment.

Evidently, the government was unsatisfied with the "federal-state balance in the prosecution of crimes." See *Jones v. United States*, 529 U.S. 848, 858 (2000) (internal quotation marks omitted). Rather than leave the state authorities to prosecute Zito's murder, the government repackaged a murder case to fit its own jurisdictional enforcement prerogatives—under the pretext of a Hobbs Act robbery.

CONCLUSION

It is respectfully submitted that the time has come to put a stop to the government's never-ending attempts to expand the breadth of the Hobbs Act. The crimes of murder and robbery are at their core state offenses—reserved to the States under the Tenth Amendment. See e.g., *Scheidler v. Nat'l Org. For Women, Inc.*, 547 U.S. 9, 20 (2006) (identifying "simple assault [and] murder" as examples of "ordinary criminal behavior" that "typically is

the subject of state, not federal prosecution"). And that is precisely where Petitioner should have been prosecuted—in the New York State Court system. See *Bond v. United States*, 572 U.S. 844, 858 (2014) ("Perhaps the clearest example of traditional state authority is the punishment of local criminal activity.").

Because the decision of the Second Circuit was erroneous with respect to this Constitutional issue, Petitioner respectfully requests that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED APRIL 8, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

22-2712-cr

UNITED STATES OF AMERICA,

Appellee,

v.

ANTHONY PANDRELLA,

Defendant-Appellant.

April 8, 2024, Decided

Appeal from an April 27, 2023 amended judgment of the United States District Court for the Eastern District of New York. (Brodie, C.J.).

Appendix A

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of April, two thousand twenty-four.

Present:

EUNICE C. LEE,
SARAH A. L. MERRIAM,
MARIA ARAÚJO KAHN,
Circuit Judges.

Appendix A

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-Appellant Anthony Pandrella ("Pandrella") appeals from an amended judgment entered following a jury trial at which he was convicted of three counts: one count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); one count of using and carrying a firearm during and in relation to the robbery, in violation of 18 U.S.C. § 924(c)(1)(A); and one count of using the firearm to knowingly and intentionally cause a person's death in the perpetration of the robbery, in violation of 18 U.S.C. § 924(j)(1). These convictions stem from the robbery and murder of Vincent Zito ("Zito"), which occurred on October 26, 2018. Pandrella timely appealed his conviction.

On appeal, Pandrella argues that: (1) the government failed to establish Hobbs Act jurisdiction by not presenting sufficient evidence of the robbery's effect on interstate commerce; (2) the district court improperly excluded Pandrella's statements to a government witness as inadmissible hearsay; and (3) the district court erred by admitting "other acts" evidence of Pandrella's association with purported criminal figures. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm.

BACKGROUND

For decades, Zito operated a loansharking business out of his home. He stored cash from his loansharking

in boxes around the house, and customers came to his residence to borrow money. He charged a weekly interest rate of three percent, although he sometimes gave lower rates to individuals he knew well. To protect his business, Zito had surveillance cameras that recorded his home's entrances and guns hidden in the areas where he met his customers.[1] When Zito sensed he was under law enforcement scrutiny—i.e., "hot"—he would bring his cash and guns to either Pandrella, his best friend, or a neighbor for safekeeping.

About a year before Zito's death, in 2017, Pandrella warned Zito that Zito was "hot." In response, Zito gave $750,000 to Pandrella to hold until things calmed down. Approximately two months before Zito's death, Zito asked Pandrella for the money back, but Pandrella was unable to return the full amount. Zito was "irate." Appellant's App'x at 151. The relationship between the two deteriorated as Pandrella remained unable to return the money.

On October 25, 2018, Zito told multiple witnesses that he was expecting to meet with Pandrella the next day. Specifically, he told his son, Joseph Zito, that he was expecting Pandrella to bring him a substantial amount of money at the meeting. The following day, October 26, 2018, at approximately 2:43 p.m., Zito's grandson discovered Zito's deceased body after getting home from school. At the crime scene, police officers recovered a revolver along

1. Pandrella asserts that the security cameras "had been blind to two whole sides of the House." Appellant's Br. at 6. However, the evidence adduced at trial showed that the areas not covered by surveillance did not contain working entrances.

with two discharged bullets, one from Zito's head and one from the floor near his body. Additionally, four luxury watches which had been given to Zito as collateral for a $50,000 loan were missing.

In the window of time in which Zito was last seen alive and before his grandson returned home, Zito's surveillance system showed only a single person entering and leaving the home: Pandrella. Specifically, Pandrella had arrived at approximately 8:10 a.m. and left at approximately 10:25 a.m. This period corresponded with the time Zito's teenage nephew, John Mosca ("Mosca"), who had been home watching television on the first floor, heard "two bangs." Gov't App'x at 14.

On the evening of Zito's death, various family members and friends, including Pandrella, gathered at Zito's home. When the conversation turned to the fact that Mosca had been home during the incident, Pandrella urgently asked Mosca's mother, Rose Zito, "Roe, Roe, Johnny Boy was home? Johnny was home? Roe, Johnny was home?" Appellant's App'x at 64.

DISCUSSION

I. There Was Sufficient Evidence to Establish Hobbs Act Jurisdiction.

We reject Pandrella's argument that the government "failed to satisfy the nexus element of" Hobbs Act robbery and that such failure "triggers the reversal of Pandrella's convictions." Appellant's Br. at 16.

We review a challenge to the sufficiency of the evidence *de novo*. *United States v. Alston*, 899 F.3d 135, 143 (2d Cir. 2018). In reviewing whether a conviction is supported by sufficient evidence, "we are required to draw all permissible inferences in favor of the government and resolve all issues of credibility in favor of the jury's verdict." *United States v. Willis*, 14 F.4th 170, 181 (2d Cir. 2021). We require only a *de minimis* showing of an effect on interstate commerce to establish Hobbs Act jurisdiction. *United States v. Rose*, 891 F.3d 82, 86 (2d Cir. 2018); *see also United States v. Silverio*, 335 F.3d 183, 186 (2d Cir. 2003) ("[I]t is the law in our circuit that '[i]f the defendants' conduct produces any interference with or effect upon interstate commerce, whether slight, subtle or even potential, it is sufficient to uphold a prosecution under the Hobbs Act.'" (quoting *United States v. Perrotta*, 313 F.3d 33, 36 (2d Cir. 2002))). "Sufficient proof to support a violation of the Act has been presented if the robbery . . . 'in any way or degree,' affects commerce, even though the effect is not immediate or direct or significant, but instead is postponed, indirect and slight." *United States v. Jones*, 30 F.3d 276, 284-85 (2d Cir. 1994) (quoting *United States v. Augello*, 451 F.2d 1167, 1169-70 (2d Cir. 1971)). Moreover, we have held that loansharking can have an effect on interstate commerce. *United States v. Fabian*, 312 F.3d 550, 555-56 (2d Cir. 2002) (holding that stealing a loansharking business's assets "depleted the available assets for that business"); *United States v. McIntosh*, No. 14-1908, 2023 U.S. App. LEXIS 2131, 2023 WL 382945, at *3 (2d Cir. Jan. 25, 2023) (summary order) (holding that the government sufficiently established the interstate commerce element when it showed that the loan shark who

was robbed had loaned money to individuals who "used it for out-of-state contracts").

Here, there was sufficient evidence for the jury to conclude that Pandrella's theft of the luxury watches depleted Zito's business assets, and therefore had at least a potential effect on interstate commerce. During the trial, multiple witnesses testified that they borrowed money from Zito and still had outstanding debts at the time of his death in 2018. For instance, Michael McKnight testified that he received two interest free loans of $4,000 from Zito in 2018. Yuriy Zayonts ("Zayonts") testified that he borrowed $50,000 from Zito in August, shortly before Zito's death in October. Instead of requiring the standard three-percent interest on the loan, Zito insisted that Zayonts need not pay any interest at all. But Zayonts wanted Zito to "have peace of mind" so he gave Zito a case of luxury watches worth approximately $30,000 as "security for the loan."[2] Appellant's App'x at 227. Further, various witnesses testified that they used Zito's loans to purchase goods made outside of the

2. Pandrella argues that because the loan to Zayonts was "interest-free" it was "personal" with no connection to the lending "business." Appellant's Br. at 19 (emphasis omitted). However, there was sufficient evidence at trial for the jury to conclude that Zito's loan to Zayonts was a part of his loansharking business and accordingly that the watches were assets of the business. *See* Appellant's App'x at 167-68 (witness describing Zayonts as Zito's "customer"); *see also United States v. Wilkerson*, 361 F.3d 717, 731 (2d Cir. 2004) ("[T]he fact that a robbery takes place at a residence does not transform the robbery from the robbery of a business into the random robbery of an individual . . . so long as the evidence supports the conclusion that the robbery targeted the assets of a business.").

state. *See, e.g.*, Appellant's App'x at 191, 193-94 (witness testifying that he borrowed money from Zito to purchase drywall made by National Gypsum); Gov't App'x at 231-32 (stipulation agreeing that National Gypsum products were manufactured outside of New York State). Thus, the jury could reasonably conclude that stealing the watches depleted the loansharking business's assets, which had at least a *de minimis* effect on interstate commerce.

II. Any Error in the Exclusion of Pandrella's Out-Of-Court Statements Was Harmless.

During Pandrella's cross-examination of Rose Zito, he sought to elicit the fact that when Pandrella gathered with the Zito family on the evening of October 26, 2018, he told Rose Zito and others that he had brought Zito breakfast that morning. The government objected, arguing that it was hearsay, and the district court agreed. The district court determined that Pandrella could not "offer the out-of-court statement[] itself" but could "confront [Rose] about whether or not she had *any* conversation with him." Appellant's App'x at 74-75 (emphasis added).

On appeal, Pandrella argues that the district court erred in excluding the statements as inadmissible hearsay because they were offered "*not* as proof of the facts asserted—i.e.[,] that he had breakfast with Zito—but as circumstantial evidence of [his] state of mind." Appellant's Br. at 30. We need not address Pandrella's argument because, even if the statements were erroneously excluded, the error was harmless.

"An erroneous ruling on the admissibility of evidence is harmless if the appellate court can conclude with fair assurance that the evidence did not substantially influence the jury." *United States v. Cadet*, 664 F.3d 27, 32 (2d Cir. 2011) (quoting *United States v. Jackson*, 301 F.3d 59, 65 (2d Cir. 2002)). Here, the jury heard testimony from a Federal Bureau of Investigations ("FBI") case agent that Pandrella had openly told the FBI that he brought Zito breakfast the morning of Zito's death, and that Pandrella "didn't hide that fact" and "consistently maintained his innocence" during all interviews. Appellant's App'x at 252. These admitted statements accomplished the same thing the excluded statements would have—that is, they demonstrated Pandrella's purported "consciousness of innocence." Appellant's Reply at 9. Thus, we conclude that excluding Pandrella's substantively similar statements to Rose Zito did not substantially influence the jury.

III. The District Court Did Not Erroneously Admit "Other Act" Evidence.

We reject Pandrella's argument that the government violated Federal Rule of Evidence Rule 404 by relying on "undisclosed 'other act[]' evidence to insinuate a criminal relationship between Pandrella and an alleged mafioso named George Lombardozzi [("Lombardozzi")]." Appellant's Br. at 32. We review a district court's evidentiary rulings with deference and reverse only if we find an abuse of discretion.[3] *United States v. Cuti*,

3. The parties dispute whether Pandrella properly contemporaneously objected to the evidence regarding Lombardozzi at trial, and thus, they dispute the relevant standard for reversal.

720 F.3d 453, 457 (2d Cir. 2013). Rule 404 states that "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed R. Evid. 404(b).

According to Pandrella, the government violated the rule by introducing evidence to associate him with Lombardozzi and the latter's connections to organized crime. However, the evidence Pandrella objects to, which establishes his relationship with Lombardozzi, was specifically used to explain his activities in the hours after the crime, which included dropping off a bag of items at Lombardozzi's home—presumably containing the stolen watches. Thus, the evidence at issue was "inextricably intertwined with the evidence regarding the charged offense" and therefore properly admitted. *United States v. Quinones*, 511 F.3d 289, 309 (2d Cir. 2007) (quoting *United States v. Towne*, 870 F.2d 880, 886 (2d Cir. 1989)); *see also United States v. Robinson*, 702 F.3d 22, 37 (2d Cir. 2012) (explaining that evidence of other acts does not violate Rule 404(b) "if it is necessary to complete the story of the crime on trial" (quoting *United States v. Carboni*, 204 F.3d 39, 44 (2d Cir. 2000))).

* * *

For the reasons set forth above, we **AFFIRM** the district court's judgment.

We do not address this issue because we conclude that the evidence was properly admitted, even under the more demanding abuse of discretion standard.

Appendix A

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX B — TRANSCRIPT EXCERPT OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK, FILED SEPTEMBER 5, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

19-CR-122(MKB)

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ANTHONY PANDRELLA,

Defendant.

United States Courthouse
Brooklyn, New York

June 13, 2022
10:00 o'clock a.m.

TRANSCRIPT OF TRIAL BEFORE THE HONORABLE MARGO K. BRODIE UNITED STATES CHIEF DISTRICT JUDGE, and a jury.

Appendix B

APPEARANCES:

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[1099] (Sidebar.)

THE COURT: Go ahead, Mr. Froccaro.

MR. FROCCARO: I move for dismissal pursuant to Rule 29 of the Federal Rules of Criminal Procedure.

THE COURT: Okay.

MR. FROCCARO: On the basis -- I believe it's a prima facie case. Is that what it was, Judge? It's been a while.

THE COURT: Okay. Would you like to be heard, Ms. Mace?

MS. MACE: We oppose the application, Your Honor.

The evidence has shown beyond a reasonable doubt that each of the three crimes charged have been proven and certainly sufficient to survive a Rule 29 application. If there are any particular areas that the defense wants to focus in on, I will respond, or the Court for that matter.

THE COURT: Okay. So the application is denied. Okay.

MR. FROCCARO: Thanks.

(Sidebar concludes.)

(Continued on the following page.)