

No. _____

In the Supreme Court of the United States

SAM SANDO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

*On Petition For A Writ Of Certiorari
To The Eighth Circuit Court of Appeals*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the district court properly (1) excluded the admission of sworn deposition statements used to impeach a hearsay declarant, (2) excluded a witness's prior sworn testimony under Rule 801 when the testimony contained a statement against interest made by another declarant, (3) excluded evidence offered to impeach a government witness because the statement was made during an investigative interview, and (4) admitted evidence of an unrelated domestic incident under Rule 404(b) when the Government failed to identify a permissible non-propensity purpose for the evidence.

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

Petitioner to this Court is Sam Sando, who was the defendant-appellant in the proceedings below.

Respondent is the United States of America who was the plaintiff-appellee below.

There are no corporate parties involved in this case.

RELATED PROCEEDINGS

- I. *Iowa v. Sam Sando*, Polk County, Iowa No. FECR358604; Judgment entered June 5, 2022.
- II. *United States v. Sando*, United States District Court for the Southern District Court, Case No. 4:24-cr-00027; Judgment entered January 13, 2025.
- III. *United States v. Sando*, Eight Circuit Court of Appeals, Docket No. 25-1065; Judgment entered May 19, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Sam Sando respectfully petitions for a Writ of Certiorari to review the judgment of the Eight Circuit Court of Appeals affirming Petitioner's conviction in this matter.

OPINIONS BELOW

The Honorable Jane Kelly, Circuit Judge for the Eight Circuit Court of Appeals, issued an order affirming Petitioner's conviction on May 19, 2026 (*United States v. Sam Sando*, No. 25-1065, App. Ct. Opinion, Appx. A-2). The Eighth Circuit denied a Petition for Rehearing en Banc on June 17, 2026 (*United States v. Sam Sando*, No. 25-1065, Order Denying Pet., Appx. A-1).

JURISDICTION

Jurisdiction of the District Court for the Southern District of Iowa was pursuant to 18 U.S.C. § 3231. Jurisdiction for the Eight Circuit Court of Appeals was pursuant to 18 U.S.C. § 3742(a)(2) and 28 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fed R. Evid. 404(A)(1)

Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

Fed R. Evid. 801(d)(1)(A)

A statement that meets the following conditions is not hearsay: (1) *A Declarant-Witness's Prior Statement*. The declarant testifies and is subject to cross-examination about a prior statement, and the statement: (A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition...

Fed R. Evid. 806

When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

STATEMENT OF THE CASE

Sam Sando was initially charged with First-Degree Murder in Iowa state court arising from a January 9, 2022, shooting where the government alleged Sando was one of two persons who discharged a firearm in the incident. In May 2023, a Polk County, Iowa jury acquitted Sando of the charges. Following Sando's acquittal, the federal government obtained an indictment charging him with related offenses arising from the same incident, including Interference with Commerce Through Robbery, in violation of 18 U.S.C. § 1951(a); Attempted Possession with Intent to Distribute a Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), and 846; and Carrying a Firearm During and in Relation to a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A)(ii).

At trial in the United States District Court for the Southern District of Iowa, the Government relied substantially on testimony and out-of-court statements from witnesses concerning the identity of the second shooter. The District Court also erroneously allowed the Government to introduce extrinsic character evidence against the Petitioner. Yet the District Court excluded several pieces of evidence Sando sought to present to the jury, including evidence impeaching a testifying witness with a prior inconsistent statement, evidence impeaching the credibility of a hearsay declarant, and prior sworn testimony bearing on whether another individual was the second shooter.

Unable to effectively present his defense and facing the cumulative weight of the erroneous evidentiary rulings, the Petitioner was convicted of the charged offenses. The Petitioner appealed, and the United States Court of Appeals for the Eighth Circuit affirmed, concluding that the District Court did not abuse its discretion in excluding the challenged evidence and that, even where the District Court erred, those errors did not prejudice the previously acquitted Petitioner.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The Eighth Circuit Court of Appeals has decided an important question of federal law that conflicts with the Federal Rules of Evidence and relevant decisions of this Court.

1. The district court erred when it refused to admit the sworn testimony of Asatu Abalo impeaching her prior hearsay statements.

Asatu Abalo did not testify at the federal trial. Yet the District Court admitted hearsay statements she had made in a collateral matter concerning the Petitioner while excluding sworn statements she made in Sando's state court case. App. Ct. Opinion at 4.; App. A-5. The statements admitted by the District Court included Abalo's description of a firearm the Petitioner allegedly possessed and statements the Petitioner allegedly made to Abalo regarding "gunfire". *Id.* Abalo later recanted those statements, testifying in a state-court deposition that she had never even seen the Petitioner with a firearm. *Id.* The District Court nevertheless refused to allow Petitioner to introduce Abalo's deposition testimony to impeach her credibility, despite Federal Rule of Evidence 806 expressly permitting impeachment of a hearsay declarant. Fed. R. Evid. 806.

When hearsay statements are admitted into evidence, a party may impeach the credibility of the declarant with any evidence that would be admissible for impeachment purposes if the declarant had testified. *United States v. Allen*, 43 F.4th 901, 909 (8th Cir. 2022). Federal Rule of Evidence 806 expressly provides:

When a hearsay statement—or a statement described in Rule 801(d)(2)(C), (D), or (E)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it.

Fed. R. Evid. 806. The Government introduced Abalo's out-of-court statements as substantive evidence against Sando. Rule 806 therefore permitted Sando to attack Abalo's credibility as though she had testified at trial. Her sworn deposition statements were directly relevant to that purpose. Abalo denied seeing Sando with a gun, denied that Sando influenced her testimony, and gave testimony inconsistent with statements she had made to police on the night in question. App. Ct. Opinion at 4; Appx. A-5. Inconsistencies may be found in changes in position, implied through silence, or in a witness's denial of recollection. *United States v. Naholi*, 911 F.3d 897, 901 (8th Cir. 2018). Abalo's deposition therefore provided classic impeachment evidence under Rule 806.

Rather than determine whether the deposition contained admissible impeachment evidence, the District Court focused on whether Abalo's testimony was sufficiently reliable. App. Ct. Opinion at 4; Appx. A-5. The Court of Appeals affirmed, holding that the deposition remained subject to Rule 403. App. Ct. Opinion at 4; Appx. A-5. In doing so, the lower courts permitted concerns about the reliability or potential confusion surrounding the deposition to override Sando's express right under Rule 806 to attack the credibility of a hearsay declarant.

Whether Abalo was believable, whether her statements contradicted her prior statements, whether she had been influenced by Sando, and whether the Government had an explanation for the discrepancies were questions for the jury. As the Eighth Circuit has recognized, "[w]hether the statements actually contradicted sworn testimony, or were discrepancies that resulted from confusion, or there was an explanation that would have clarified the discrepancies are all issues that go to the weight to be given the evidence, not its admissibility." *Naholi*, 911 F.3d at 902. The jury, not the court, was entitled to determine the credibility and weight of Abalo's deposition.

The Court of Appeals relied on the District Court's conclusion that admitting the deposition would allow the Government to introduce evidence explaining Abalo's

contradictory account. App. Ct. Opinion at 4; Appx. A-5. The District Court further reasoned that admission could open the door to previously omitted body-camera footage and approximately 300 recorded telephone calls between Sando and Abalo while Sando was incarcerated. But Rule 403 should not permit the Government to defeat proper impeachment merely by asserting that rebuttal evidence would be burdensome or extensive. The possibility that the Government might respond with additional evidence does not justify preventing a defendant from exercising a right expressly granted by Rule 806. Any proper rebuttal could have been presented in a manner that avoided unnecessary delay, confusion, or cumulative evidence.

The Court of Appeals also deferred to the District Court's observation that either party could have called Abalo as a witness. App. Ct. Opinion at 5; Appx. A-6. But Rule 806 exists precisely because a party may attack the credibility of a hearsay declarant without calling that declarant to testify. The Government chose to present Abalo's out-of-court statements rather than subject her to cross-examination. Having obtained the benefit of those statements, the Government could not deprive Sando of the corresponding right to attack their source. Nor did Sando bear any burden to call Abalo or otherwise cure the Government's evidentiary choices.

The error was particularly significant because Abalo's statements were central to the Government's theory that Sando went from possessing a gun at Abalo's residence, to becoming desperate for money, and ultimately to deciding to commit the robbery. Yet the jury heard only the version of Abalo's statements presented by the Government and was denied evidence that she had subsequently denied seeing Sando with a gun, denied that Sando influenced her testimony, and otherwise provided inconsistent accounts.

The excluded impeachment evidence directly concerned a material component of the Government's case, and Sando was acquitted of these charges in state court. The state-court

acquittal provides an unusually concrete indication that the evidence surrounding these allegations could produce a different result when presented to a factfinder.

In sum, the District Court erred by applying Rule 403 so broadly that it excluded proper impeachment evidence under Rule 806. The mere fact that the government may have been entitled to respond with additional evidence that appeared voluminous did not nullify the Petitioner's express right under Rule 806 to attack the credibility of a hearsay declarant. Once the Government placed Abalo's hearsay statements before the jury, Sando was entitled to present admissible evidence bearing on her credibility. Whether the deposition was believable, whether its inconsistencies could be explained, and whether the Government's competing evidence was more persuasive were matters for the jury—not grounds for preventing the jury from hearing the impeachment evidence.

2. The district court erred when it refused to admit statements that Alena Williams had claimed to have been told by Andrew Meyer about getting rid of a gun.

At Sando's state trial, Alena Williams testified that another man who was present at the shooting, Andrew Meyer, sent her a message following the incident where he stated that "later on . . . he tried to get rid of a gun, that he burnt it or put it in the lake[.]" App. Ct. Opinion at 5; Appx. at 6. The District Court improperly excluded this statement from evidence.

First, Williams's prior sworn testimony was not hearsay. Williams testified at Sando's federal trial and was subject to cross-examination concerning her prior statement. *Id.* Her prior testimony was given under penalty of perjury at a state-court trial concerning the same events. Federal Rule of Evidence 801(d)(1)(A) therefore provides that the prior statement is not hearsay if it was inconsistent with her federal trial testimony. Fed. R. Evid. 801(d)(1)(A).

Next, the statement was also admissible as a statement against Meyer's interest under

Rule 804(b)(3). The Appellate court found no abuse of discretion in the district court's finding that Meyer was not "unavailable" under Rule 804(a)(3), reasoning that Meyer did more than claim he could not remember the statement—he also denied that he would have made it. That conclusion overlooks Meyer's repeated testimony that he could not remember the substance of his conversation with Williams and focuses on Meyer's own attempts at limiting his liability for potentially returning fire in the incident.

Rule 804(a)(3) expressly provides that a declarant is unavailable when he "testifies to not remembering the subject matter" of the statement. Meyer testified that he remembered having a conversation with Williams after fleeing the scene but could not remember its substance. App. Ct. Opinion at 6; Appx. at 7. When asked whether he told Williams in a Facebook conversation that he had gotten rid of a gun, he responded, "I don't remember." When asked whether he remembered sending the message, he again responded, "I don't remember the conversation." Trial Vol. 2 p 91:14-17; Appx. A-12. Meyer thus acknowledged that he had communicated with Williams while repeatedly testifying that he could not remember the substance of that conversation. That testimony satisfied Rule 804(a)(3)'s express definition of unavailability.

While rule 804(b)(3)(B) requires corroborating circumstances when a statement is "offered in a criminal case as one that tends to expose the declarant to criminal liability." Fed. R. Evid. 804(b)(3)(B). The heightened corroboration requirement reflects the concern that statements offered to exculpate a criminal defendant by shifting blame to another person may be particularly susceptible to fabrication.

Those concerns were materially different here. The statement did not establish that Meyer committed the charged killing. Sando's defense was that Sahr was one shooter and Meyer was the other—that Meyer returned fire with his own firearm, accounting for the two types of ammunition recovered from the scene. The statement therefore supported Sando's

alternative-shooter theory by suggesting that Meyer possessed and attempted to dispose of a firearm after the shooting. It did not necessarily establish that Meyer committed the charged offense.

The Court of Appeals relied on *United States v. Alexander*, where the declarant was a codefendant charged with the criminal conduct at issue. *United States v. Alexander*, 114 F.4th 967, 973 (8th Cir. 2024). That distinction is significant. Here, Meyer was never charged with the shooting, was not a codefendant, and did not admit to committing the charged offense. The reliability concerns underlying the heightened corroboration requirement were therefore substantially diminished.

At minimum, the circumstances surrounding the shooting provided corroborating circumstances sufficient to permit the jury to consider the statement. Andrew Meyer was in the business of selling fake drugs and real fentanyl; Andrew Meyer organized the transaction that led to the shooting; and Andrew Meyer was at the scene of the crime. App. Ct. Opinion at 2; Appx. at 3. It is hard to imagine what additional corroborating circumstances could reasonably be required before a defendant may successfully invoke Rule 804. And if any further confirmation is necessary, Meyer has since been convicted of felony weapons and drug-dealing offenses. *Iowa v. Meyer*, FECR369829, Sentencing Order; A-13.

In short, Meyer's testimony, Williams's prior sworn testimony, and the circumstances surrounding the shooting provided corroborating circumstances sufficient to permit the jury to consider the statement. The district court instead treated Meyer's inability to remember as insufficient because he also denied making the statement, effectively requiring Sando to independently prove the very statement he sought to introduce. That approach improperly resolved a credibility dispute against the defense rather than allowing the jury to weigh the competing testimony.

3. The district court erred when it refused to allow impeachment of a law enforcement officer admitting a government witness had been lying to him.

The District Court also improperly limited the Petitioner's ability to impeach Detective Benjamin Carter, who interviewed Williams about the events of January 9. Carter testified in the District Court proceedings that Williams was minimizing her statements rather than lying. App. Ct. Opinion at 7; Appx. A-8. But during the prior interview, Carter explicitly told Williams that she was lying. *Id.* That inconsistency was proper impeachment evidence. "Inconsistencies may be found in changes in position; they may be implied through silence; and they may also be found in denial of recollection." *United States v. Naholi*, 911 F.3d 897, 901 (8th Cir. 2018).

The District Court nevertheless refused to permit the Petitioner to ask Carter whether he had previously accused Williams of lying or to confront him with the recording of that statement. App. Ct. Opinion at 8; Appx. A-9. The Court reasoned that officers routinely tell suspects during adversarial interviews that they are lying as an investigative technique and concluded that such statements are not impeachable unless the officer later memorializes the accusation in a report or makes a similar statement outside the interview.

That limitation improperly resolved a credibility dispute that belonged to the jury. The Petitioner was entitled to have Carter explain why he told Williams she was lying during the interview but later testified that she was merely minimizing. The jury could have accepted that explanation—or concluded that Carter was attempting to protect an important Government witness. Either way, "[w]hether the statements actually contradicted sworn testimony, or were discrepancies that resulted from confusion, or there was an explanation that would have clarified the discrepancies are all issues that go to the weight to be given the evidence, not its admissibility." *Naholi*, 911 F.3d at 902.

The Eighth Circuit did not identify any basis for concluding that the excluded impeachment was irrelevant or confusing. Instead, it acknowledged that there was no reason on the record to limit Sando's ability to impeach Carter with his prior statement. App. Ct. Opinion at 8; *see United States v. Campbell*, 986 F.3d 782, 794 (8th Cir. 2021) (recognizing reasonable limits on cross examination could be based on factors such as harassment, prejudice, or confusion of the issues). The court nevertheless found no prejudice because the jury heard other evidence suggesting that Meyer remained in the vehicle during the shooting, including Meyer's own testimony, security-camera footage, Williams's testimony, and testimony concerning fragmented safety glass near the vehicle. App. Ct. Opinion at 9; Appx. A-10.

That analysis overlooks the purpose and significance of the excluded impeachment. The question was not simply whether other evidence suggested that Meyer remained in the vehicle. The question was whether the jury believed the witnesses upon whom that conclusion depended. Meyer was a particularly vulnerable witness. He had multiple prior felony convictions, gave inconsistent testimony concerning firearms, admitted he was under the influence during the shooting, had an obvious motive to minimize his own conduct, and testified pursuant to immunity for his controlled-substance offenses. The Government therefore relied heavily on Williams to corroborate his account.

Carter's prior statement went directly to Williams's credibility. If Carter had previously accused Williams of lying about the events, the jury could reasonably have viewed her subsequent testimony—that she did not see Meyer leave the vehicle until after the shooting—with greater skepticism. And if Carter had changed his own characterization of Williams from “lying” to merely “minimizing,” the jury could have questioned whether Carter was accurately recounting his interview or protecting Williams's credibility after the fact. Those were precisely the credibility determinations the jury, rather than the court, was entitled to

make.

Most importantly, the Eighth Circuit treated Carter's statement as a single, isolated piece of impeachment rather than considering its effect in the context of the defense as a whole. Sando's defense was that Meyer—not Sando—was the second shooter. App. Ct. Opinion at 8; Appx. A-9. The defense therefore depended on creating reasonable doubt about the testimony of Meyer and Williams. The jury was required to credit their accounts that Meyer remained in the vehicle when the shooting occurred. Evidence that Carter himself had previously accused Williams of lying directly undermined the credibility of the witness the Government relied upon to corroborate Meyer.

The record also provides an unusually concrete indication of prejudice. Sando was acquitted in state court, where the jury heard evidence that was materially different from the evidence presented in the federal trial. The federal jury convicted Sando after being denied impeachment evidence that could have materially altered its assessment of Williams's credibility.

The Eighth Circuit therefore erred in treating the excluded impeachment as having no more than a slight influence on the verdict. The relevant question was not whether other evidence supported the Government's theory, but whether the excluded evidence could reasonably have affected the jury's assessment of the witnesses whose credibility was essential to that theory. Carter's prior statement directly attacked Williams's credibility and, in turn, the Government's principal evidence identifying the second shooter. The exclusion of that evidence deprived Sando of a meaningful opportunity to impeach a critical Government witness and affected the verdict.

- 4. The district court erred in allowing evidence of a domestic incident the night before of prior bad acts that were extrinsic to the crime.**

At Sando's District Court trial, the Court admitted evidence of a domestic violence incident from the early morning hours of January 9, 2022. App. Ct. Opinion at 9; Appx. A-10. The Petitioner's actions and statements made the night before the incident at issue were neither relevant nor admissible under Federal Rules of Evidence 401, 402, 403, and 404(b), and their introduction was unfairly prejudicial. The above evidence has no relation or relevance to the elements of any crime Sando was charged with.

The Court conducts a four-part test to determine whether evidence is admissible under Rule 404(b). *United States v. LaFontaine*, 847 F.3d 974, 981 (8th Cir. 2017). The Court must determine that the evidence is relevant to a material issue; similar in kind and not overly remote in time to the crime charged; supported by sufficient evidence; and that its potential prejudice does not substantially outweigh its probative value. *Id.*

The above evidence is not relevant to any material issue, such as proving a specific element or aspect of the charged offense. Fed. R. Evid. 404(b). The Court must consider carefully whether the evidence's intended purpose is merely "a disguised use for impermissible propensity purposes." *United States v. Miller*, 673 F.3d 688, 692 (7th Cir. 2012). The Court should not "apply[] the exceptions in Federal Rule of Evidence 404(b) too loosely to admit prior bad acts, especially in drug cases, without paying close attention to both the legitimacy of the purpose for which the evidence is to be used and the need for it." *Id.* (citing *United States v. Beasley*, 809 F.2d 1273, 1277-80 (7th Cir. 1987)). "Evidence of a defendant's prior convictions is categorically inadmissible to prove the defendant's criminal propensity." *United States v. Cotton*, 823 F.3d 430, 433 (8th Cir. 2016); *see also* Fed. R. Evid. 404(b)(1). "Allowing a prosecutor routinely to introduce drug convictions in the case in chief without demonstrating relevance to some concrete dispute between the litigants creates needless risk that a conviction will rest on the forbidden propensity inference." *United States*

v. Jones, 455 F.3d 800, 812 (7th Cir. 2006) (Easterbrook, J., concurring).

In addition, the potential for unfair prejudice substantially outweighed the probative value of this evidence. Studies confirm that juries treat evidence of prior bad acts as highly probative. *See State v. Sullivan*, 679 N.W.2d 19, 24 (Iowa 2004) (discussing empirical studies). Prejudicial effect may come from propensity – the assumption that the defendant acted in conformity with his prior conviction – or from an improper inference that the defendant is a bad person who deserves to be punished. “Evidence of a prior crime is always unduly prejudicial to a defendant,” as it “diverts the attention of the jury from the question of defendant’s responsibility for the crime charged to the improper issue of his bad character.” *United States v. Phillips*, 401 F.2d 301, 305 (7th Cir. 1968). “Even when the prior criminal record is brought into the evidence in an appropriate manner, there is the well-nigh inescapable prejudice on the issue of guilt.” *United States v. Carter*, 482 F.2d 738, 740 (D.C. Cir. 1973). Evidence of prior bad acts is “not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge.” *Michelson v. United States*, 335 U.S. 469, 475-76 (1948).

The Government never provided an avenue for admissibility that does not rely on propensity. As other courts have noted, “Intent is an element of virtually every crime. If the intent exception warranted admission of evidence of a similar crime simply to prove the intent element of the offense on trial, the exception would swallow the rule.” *Thompson v. United States*, 546 A.2d 414, 421 (D.C. 1988).

The Government failed to provide any justification for the evidence’s use that would be permissible under Rule 404(b). “Mere recitation of the Rule without an accompanying case-specific analysis risks couching criminal propensity in terms of knowledge, intent, or lack of

mistake. Rule 404(b), by its own terms, requires more.” *Cotton*, 823 F.3d at 435.

As the proponent of the evidence, the Government had the burden to show that the evidence is relevant under Rule 401, that its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury under Rule 403, and that the evidence is admissible under Rule 404(b).

In particular, the allegations of domestic assault were particularly prejudicial. *See United States v. Farish*, 535 F.3d 815, 820 (8th Cir. 2008) (noting that “the admission of prior bad acts of domestic abuse can create unfair prejudice,” but finding that the admission did not result in unfair prejudice when such evidence was necessary to prove defendant’s motive to commit the crime of arson, which was related to the prior instances of domestic abuse). The court should have excluded all domestic allegations and constrained the evidence to only statements and evidence concerning possession of a firearm.

CONCLUSION

Sam Sando was acquitted by a jury of his peers in state court. The federal government then sought to relitigate the same underlying issues on a different playing field. Its case depended substantially on witnesses whose credibility Sando was not permitted to fully challenge. The district court excluded evidence that the Federal Rules of Evidence expressly permit a defendant to use to test the credibility of both witnesses and hearsay declarants. The district court further included evidence that the Federal Rules of Evidence expressly disallow. These evidentiary rulings were not inconsequential, as they materially altered the evidence presented to the jury and ultimately made the difference between his acquittal in state court and his conviction in federal court.

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