Team T11R – Original

No. 25-7373

In the Supreme Court of the United States

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT, THE UNITED STATES OF AMERICA

Attorneys for the Respondent

QUESTIONS PRESENTED

1. Under *Payton v. New York*, is the Fourth Amendment violated when law enforcement officers, who remain outside, instruct a suspect inside the home to step outside and arrest the suspect outside the home without a warrant?
2. When a co-inhabitant of a shared residence with apparent authority over a closed container found within a shared space consents to a search of the premises, does law enforcement's warrantless search of said container violate the Fourth Amendment when the officer did not inquire into the container's specific ownership?
3. Under Rule 806 of the Federal Rules of Evidence, subject to the limitations of Rule 608(b) which prohibits the use of extrinsic evidence for character impeaching purposes, can extrinsic evidence of specific instances of conduct of a hearsay declarant be admitted as impeaching evidence of the declarant's character for truthfulness when the declarant is unavailable to testify at trial?

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CONSTITUTIONAL PROVISION

The text of the following constitutional provision is provided below:

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

STATEMENT OF THE FACTS

Jodie Wildrose joined the Department of Tourism (the "Department") as Under Secretary for Rural Development in December 2023, after fifteen years of teaching geology at Court Street College in Boerum. (R. 4.) During her time at Court Street College, Atticus Hemlock ("Defendant"), was a student in one of her geology classes during his sophomore year. (R. 5.)

On February 20, 2024, the Department announced to the public its "Grow Your Own Way" program (the "Program") and its initial kickoff event which would take place in Boerum Village from April 8, 2024, through April 12, 2024. (R. 4.) The announcement stated that Ms. Wildrose would be appearing at its initial kickoff event. (R. 4.)

On March 28 and 29, 2024, after learning of Ms. Wildrose's planned visit to Boerum Village, Defendant and Iris Copperhead visited From Bean to Brew, a coffee shop in Boerum

Village, Boerum. (R. 7.) Elvis Hoag, a barista at From Bean to Brew, witnessed Defendant and Ms. Copperhead loudly and excitedly discussing someone named Jodie, making statements such as "hiding Jodie away", and "napping Jodie as soon as she pulled into the parking lot and throwing her in a way," while Ms. Copperhead reportedly mentioned the parking lot was an ideal place to grab Jodie, rather than a busy airport. (R. 8.) Defendant then referred to Jodie as a federal government official, and the two began discussing some sort of "insider deal" they believed Jodie was profiting from and how corrupt Jodie was for colluding with real estate developers who ultimately benefit from the federal government's plans. (R. 8.) Mr. Hoag reported this discussion to the Boerum Village Police Department ("Boerum Police") on March 29, 2024. (R. 7.)

The next day, March 30, 2024, Boerum Village police received a call from Tina Caplow, a manager at an Every-Mart Superstore, reporting that around 11:00 a.m. on March 30, 2024, a male and female entered the store while Ms. Caplow oversaw the checkout register. (R. 6.) The individuals reportedly purchased a pack of zip ties, two ski masks, a six-inch folding knife, black trash bags, and bear spray, and they paid for their purchases with cash. (R. 6.) The combination of the items, the cash purchase, and the individuals' demeanor made Ms. Caplow suspicious of criminal activity, so she decided to call Boerum Police to report her suspicions about an hour after the two left the store. (R. 6.)

Believing the two reports to be related and considering the gravity of the alleged kidnapping plan of a government official, Boerum Police forwarded the reports to the FBI. (R. 20.) On the morning of April 2, 2024, just a day or two after receiving the tips from Boerum Police, Special Agents Hugo Herman and Ava Simonson (the "Agents") interviewed Mr. Hoag and Ms. Caplow to further investigate the reports. (R. 6–8.)

Around 4:00 p.m. that same day, in furtherance of their investigation, the Agents went to Defendant's residence to inquire about the information received in the reports. (R. 11.) Defendant resided in a cabin on County Road in Boerum Village, which was located about 500 feet from a walking path in Joralemon State Park. (R. 20.) The Agents drove an unmarked vehicle to Defendant's cabin and were not in full uniform, wearing only khakis, black long sleeve polo shirts, (R. 29.), and duty belts, which consisted of "all the standard tools," including 9-millimeter handguns tucked securely into their holsters. (R. 25.)

Upon arriving at Defendant's cabin at 4:08 p.m., Special Agent Herman ("SA Herman") testified that Defendant's front door was open with the screen door closed, so he and Special Agent Simonson ("SA Simonson") could see into Defendant's kitchen. (R. 21.) SA Simonson walked up the front steps and knocked on the doorframe three times before walking back down the steps to stand with SA Herman about three or four feet from the bottom stair. (R. 21.) When Defendant came to the door, the Agents greeted him, identified themselves as FBI agents, and asked him to come outside so they could ask him questions for their investigation. (R. 11.)

During this initial interaction, Defendant gave vague responses to the Agents' inquiries and became increasingly agitated. (R. 11–12). At one point, SA Herman saw two bottles of chloroform on Defendant's counter and inquired about them. (R. 11.) In response, Defendant moved his body to block SA Herman's view, stating, "Don't worry about those," before asking, "Does this have to do with Jodie?" (R. 11.) SA Herman told Defendant that they could come back another time to talk if that was better for him, to which Defendant stated that he did not want, "to talk anything about that b**ch." (R. 12.)

At this time, after less than ten minutes of speaking with Defendant through his screen door, the Agents briefly returned to their vehicle to discuss the confirmed allegations based on

the chloroform bottles they observed in Defendant's home, his demeanor, and the unprompted mentioning of Ms. Wildrose. (R. 12.) As they were in their vehicle, they saw Mr. Hemlock "glaring at [them] through the screen door," and commenting that "[h]e looks pissed." (R. 12.) After a total discussion of about four minutes, the Agents determined that they had probable cause to effect Defendant's arrest and decided to reapproach Defendant once more to see if he would exit his home. (R. 12.)

At 4:20 p.m., the Agents reapproached Defendant's door and requested he step outside while emphasizing their need for answers for the investigation, to which Defendant responded, "okay. I'll come out." (R. 12.) Once Defendant placed both feet on the ground at the bottom of his steps outside, SA Simonson handcuffed him and told him he was under arrest for attempting to kidnap a federal official. (R. 23.)

At this same time, Ms. Copperhead was approaching the cabin from the walking trails of the park when she observed Defendant being placed under arrest. (R. 41–43.) Upon her retreat from the scene, Ms. Copperhead ran into Theodore Kolber, an unknown park attendee walking on the trail. (R. 42.) Mr. Kolber observed that Ms. Copperhead was visibly shaken, crying, and out of breath. (R. 42.) In response to Mr. Kolber asking if she was okay, Ms. Copperhead began yelling, "I can't believe I saw him get arrested. It was all Atticus' idea—NOT MINE! . . ." (R. 43.)

While SA Simonson read Defendant his Miranda warnings, SA Herman performed a search of Defendant's person incident to his arrest, securing a notebook that was in Defendant's pocket. (R. 12.) The notebook was opened to a diary entry in which Defendant's emphasized his hatred for Ms. Wildrose and laid out his plan to kidnap her upon her arrival in Boerum Village. (R. 24.)

While the Agents continued to secure Defendant and take him for further processing, Special Agent Kiernan Ristroph ("SA Ristroph"), arrived on the scene and was instructed by SA Herman to wait for Defendant's girlfriend, Fiona Reiser, who resided with Defendant, to arrive home to attempt a consent search of the cabin. (R. 12.)

Upon Ms. Reiser's arrival to the home, SA Ristroph knocked on the cabin door, identified himself, informed Ms. Reiser that Defendant had been arrested, and asked Ms. Reiser if he could look around the residence as part of their investigation. (R. 13.) Ms. Reiser questioned into Defendant's arrest and the reason for the search, to which he responded that it all stemmed from an ongoing investigation. (R. 15.) Ms. Reiser voluntarily opened her front door and allowed SA Ristroph inside. (R. 13.) SA Ristroph first checked the kitchen, and then moved to the living room before he noticed a set of stairs leading to a second floor. (R.13, 15.) SA Ristroph then asked Ms. Reiser what was on the second floor. (R. 13.)

According to SA Ristroph's Investigative Report dated April 2, 2024, Ms. Reiser told him that she and Defendant used the second floor for storage and office space, and "[b]ecause of this comment, [he] confined the search to the first floor." (R. 13.) However, Ms. Reiser's Declaration stated that she told Special SA Ristroph that "[Defendant] used [the second floor] as storage and an office space," and she did not know what he kept up there because she did not frequently go up there. (R. 15.)

Regardless of the discrepancies in the record, SA Ristroph never searched the second floor nor stepped foot on the staircase leading up to it. (R. 13, 16.) On the second step of the staircase, SA Ristroph identified a plain, closed cardboard box, which he opened and found the following materials inside:

> 1 50-feet long length of rope, 2 black ski masks, 1 pair of green gloves, 48 black zip ties, 1 folding knife with 6-inch blade, 1 roll of duct tape, and 2 bottles of chloroform. Ms. Reiser denied ever seeing these materials before.

(R. 13.)

All the items identified in the cardboard box were seized as evidence to be used against Defendant at trial. (R. 13.)

STATEMENT OF THE CASE

On April 12, 2024, the United States District Court for the Northern District of Boerum entered a judgment of conviction against Defendant for the attempted kidnapping of an officer of the United States government on account of the officer's official duties under 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d). On October 17, 2024, he was sentenced to ten years in prison. Defendant appealed the judgment of conviction and sentencing to the United States Court of Appeals for the Fourteenth Circuit, raising three issues challenging his conviction.

The Fourteenth Circuit affirmed the District Court's ruling on all three issues, holding that (1) Defendant's warrantless arrest outside of his home after he was asked to step outside by law enforcement did not violate the Fourth Amendment, thus the evidence seized incident to his arrest was properly admitted; (2) the evidence seized without a warrant from the open container in Defendant's cabin was properly admitted because the officer reasonably believed that a co-occupant of the cabin possessed the apparent authority necessary to consent to the container's search; and (3) extrinsic evidence of specific instances of a hearsay declarant to impeach the declarant's credibility was properly excluded at trial because Federal Rules of Evidence Rule 608(b)'s explicit ban on introducing extrinsic evidence to impeach a witness's credibility is not overcome by Rule 806.

On December 2, 2025, this Court granted Defendant's petition for writ of certiorari to the United States Court of Appeals for the Fourteenth Circuit in the Supreme Court of the United States.

SUMMARY OF THE ARGUMENT

Law enforcement officers must be permitted to conduct investigations based on their perceived situations and facts reasonably available to them at the time of action. By allowing contemporaneous fact-based investigations, law enforcement can protect public safety while remaining subject to judicial review, ensuring that constitutional limits are preserved without sacrificing effective law enforcement.

Defendant's warrantless arrest outside of his home after the Agents' command to exit his home did not constitute a violation of Defendant's Fourth Amendment right. The bright line Fourth Amendment rule adopted by this Court regarding arrests within the home expressly prohibits law enforcement's warrantless, physical intrusion into the home, absent exigent circumstances. Thus, given that neither of the Agents ever stepped foot into Defendant's home during their encounter, it is clear that there was no violation of Defendant's Fourth Amendment right. Where the totality of circumstances would lead a reasonable person to believe that the coercive conduct of law enforcement has restrained their freedom of movement, a seizure has occurred through the "assertion of authority." Considering the circumstances in totality of Defendant's arrest, there was nothing to suggest that Defendant was coerced to leave his home. Conversely, the record shows that Defendant voluntarily exited his home at the request of the Agents.

SA Ristroph's search of the closed carboard box found in Defendant's residence did not violate Defendant's Fourth Amendment protection against unlawful search and seizure because

Ms. Reiser had the apparent authority to consent to the search. Whether her apparent authority is analyzed through an obviousness approach or an ambiguousness approach, the surrounding circumstances would lead a reasonable officer to believe that she had the apparent authority to consent to its search. Additionally, the scope of her consent was not limited to exclude the box given that neither she nor SA Ristroph made any statements limiting the consent and that the search remained within the bounds of the consent given.

Extrinsic evidence of Ms. Copperhead's prior instances of misconduct in the form of an undergraduate academic dishonesty letter and falsified job application were properly excluded under Federal Rule of Evidence 806. Rule 806 is subject to the limitations imposed by Rule 608(b) which prohibit the use of extrinsic evidence for impeachment purposes. Even though Defendant had no opportunity to cross examine Ms. Copperhead regarding the prior misconduct, Rule 401 further limited the availability to introduce the extrinsic evidence due to its highly prejudicial consequences to the jury.

ARGUMENT

I. Defendant's Arrest Did Not Violate the Fourth Amendment Under Payton.

The Fourteenth Circuit correctly held that the Defendant's arrest did not violate the Fourth Amendment under *Payton*. Under the Fourth Amendment, protection is given to, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Although traditional, common-law rules and Fourth Amendment case law allow warrantless arrests where an officer has probable cause to believe a person committed a felony, *United States v. Watson*, 423 U.S. 411, 417 (1976) (citation

omitted), this Court drew a "firm line" at the entrance to the house, prohibiting warrantless arrests within the home, absent exigent circumstances. *Id*. at 590.

Despite *Payton's* bright-line rule, circuit courts disagree in their interpretations of Payton. Courts applying the narrow interpretation take *Payton* for what it is: a prohibition against the *physical* intrusion of a suspect's home by an officer to effect a warrantless arrest. *See, e.g., Gaddis v. DeMattei*, 30 F.4th 625, 633 (7th Cir. 2022). Conversely, those interpreting the rule broadly apply the constructive entry doctrine, eschewing *Payton*'s categorical approach and muddling privacy concerns and the assertion of authority. *See, e.g., United States v. Morgan*, 743 F.2d 1158, 1166–67 (6th Cir. 1984). Under either interpretation, the Defendant's warrantless arrest upon exiting his home is constitutionally valid under the Fourth Amendment. Accordingly, this Court should affirm the Fourteenth District's decision below. (R. 55.)

A. The Constructive Entry Doctrine is inconsistent with this Court's Fourth Amendment precedent.

The constructive entry doctrine is inconsistent with this Court's Fourth Amendment precedent, and therefore, should not be applied to this case. The Fourth Amendment favors clear, categorical, and objectively administrable rules that law enforcement can apply in real time, rather than nuanced, case-by-case standards that invite judicial second-guessing. *See, e.g., Atwater v. City of Lago Vista*, 532 U.S. 318, 347–51 (2001) (emphasizing the government's essential interest in readily administrable rules to guide law enforcement activities). Further, because officers must act under time pressure and without the benefit of legal hindsight, the Fourth Amendment doctrine is structured to provide bright-line guidance capable of consistent application in the field. *See New York v. Belton*, 453 U.S. 454, 458–60 (1981) (rejecting highly nuanced rules due to impracticalities for officers in the field and potentially inconsistent applications of constitutional protections).

Rules that are incapable of being applied in real time prevent officers from conforming their conduct to the constitutional standard governing at that time, resulting in vulnerability to judicial second-guessing. *See, e.g., Oliver v. United States*, 466 U.S. 170, 181–82 (1984) (emphasizing that ad hoc definitions of Fourth Amendment standards lead to arbitrary and inequitable enforcement of constitutional rights). Law enforcement officers must be able to reasonably rely in good faith on the law governing their conduct at the time, otherwise they risk the inadmissibility of evidence for failure to adhere to constitutional standards. *See United States v. Leon*, 468 U.S. 897, 907–08, 922 (1984) (explaining the good-faith exception and its support of reliance interests and rule-based compliance); *see also Illinois v. Krull*, 480 U.S. 340, 347–49 (1987) (explaining the exclusionary rule is intended to deter unlawful police conduct); *Davis v. United States*, 564 U.S. 229, 236–39 (2011) (explaining that officers rely on binding appellate precedent and governing law at the time of the search).

The constructive entry doctrine is inconsistent with this Court's Fourth Amendment precedent and therefore should not be applied. First, the doctrine departs from the Supreme Court's place-based framework by treating coercive police conduct as the equivalent of physical intrusion. This Court has treated entry as a concrete, physical act in determining when heightened Fourth Amendment protections apply. *See United States v. Santana*, 427 U.S. 38, 42 (1976); *Florida v. Jardines*, 569 U.S. 1, 6–7 (2013). Circuits adopting the narrow interpretation limit *Payton* to warrantless arrests involving physical entry and reject constructive entry theories based solely on police commands or displays of authority. *See United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991); *Knight v. Jacobson*, 300 F.3d 1272, 1277–78 (11th Cir. 2002); *United States v. Allen*, 813 F.3d 76, 88–89 (2d Cir. 2016). By contrast, the constructive entry doctrine collapses *Payton* into a nuanced and "conceptually muddled," rule, undermining the

clarity and administrability this Court's Fourth Amendment cases demand. *See, e.g., Morgan*, 743 F.2d at 1166–67 (treating police commands and surrounding of residence equivalent to warrantless entry); *United States v. Al-Azzawy*, 784 F.2d 890, 893–94 (9th Cir. 1985) (applying *Payton* where officers remained outside but used show of force to order suspect out of home); *United States v. Reeves*, 524 F.3d 1161, 1167–69 (10th Cir. 2008) (holding that *Payton* applies when police coerce suspect to exit home and submit to arrest).

Second, unlike *Payton* and other Fourth Amendment jurisprudence, which favor clear, categorical, and objectively administrable Fourth Amendment rules, the constructive entry doctrine is nuanced and "beset with practical problems," eroding clarity by requiring courts to weigh subjective and non-exhaustive factors. *See Allen*, 813 F.3d at 87–88 (emphasizing the constructive entry doctrine's practical problems). Further, the doctrine is incapable of providing guidance to officers *in real time*, leaving law enforcement vulnerable to judicial second-guessing and risking the inadmissibility of evidence due for failure to adhere to constitutional standards. *See Weeks v. United States*, 232 U.S. 383, 398 (1914) (holding that evidence obtained by federal officers through unconstitutional search and seizure must be excluded from trial).

Thus, the constructive entry doctrine eschews this Court's bright line rule decided under *Payton*, proving to be inconsistent with Fourth Amendment precedent, and therefore should not be applied as a governing standard.

B. Under *Payton's* narrow interpretation, Hemlock's arrest was clearly constitutionally proper.

Under *Payton's* narrow interpretation, Defendant's arrest did not violate the Fourth Amendment. Under *Payton*, "the Fourth Amendment draws a firm line at the entrance to the house," and courts applying *Payton* narrowly have consistently recognized its "literal holding that non-exigent, warrantless arrests *inside the home* violate the Fourth Amendment." *See*

Gaddis, 30 F.4th at 633 (citation omitted). So long as law enforcement officers never physically cross that threshold and enter the home, no *Payton* violation of the Fourth Amendment occurs. *See Id.*; *Knight*, 300 F.3d at 1277. Further, *Payton* does not prevent law enforcement officers who remain outside the home from commanding a suspect inside his home to come outside to then arrest the suspect once he is outside the home. *See*, *e.g.*, *Knight*, 300 F.3d at 1277 (drawing a firm-line boundary at the entrance to a home and explaining that "*Payton* keeps the officer's body outside the threshold, not his voice"); *Berkowitz*, 927 F.2d at 1385 (holding that *Payton* prohibits only a warrantless *entry* into the home, not a policeman's use of his voice to convey a message of arrest from outside the home) (emphasis added).

In *Knight v. Jacobson*, the court held that a suspect's arrest does not violate *Payton* where law enforcement "never crosse[s] that threshold or [goes] over the line at the entrance to the house," despite law enforcement instructing the suspect to step outside before effectuating the arrest. *Knight*, 300 F.3d at 1277. The officer in *Knight*, having probable cause, arrived at the suspect's apartment at 2:00 a.m. without a warrant, knocked on his door, told the suspect to step outside, and when the suspect did, the officer immediately placed him under arrest. *Id.* at 1273. The Court reasoned that because the officer never physically entered the suspect's home, there was no Fourth Amendment violation because *Payton* does not prohibit law enforcement from "telling a suspect to step outside his home and then arresting him without a warrant." *Id.* at 1277.

Applying *Payton* narrowly, Defendant's arrest did not violate the Fourth Amendment. Like the officer in *Knight*, who verbally commanded the suspect to exit his home but never physically entered the home, the Agents told Defendant to exit his home but never physically entered to effectuate his arrest. (R. 24.) As SA Herman testified, neither he nor SA Simonson ever stepped foot into Defendant's home during their encounter, and aside from SA Simonson

climbing the front stairs to knock upon arrival, they never stepped foot even onto the stairs. (R. 24.) SA Herman further testified that he and SA Simonson remained outside, "maybe three or four feet from the bottom step" throughout the encounter, (R. 21.), until Defendant exited, and did not effectuate the arrest until Defendant was on the ground outside the home (R. 23.)

Therefore, because the Agents never physically crossed the threshold at the entrance to the house during the arrest, Defendant's arrest is valid under *Payton's* narrow interpretation.

C. Even if this Court were to apply *Payton's* broad, constructive entry doctrine, Hemlock's arrest was still constitutionally proper.

Even if this Court were to apply the constructive entry doctrine, Defendant's arrest did not violate *Payton*. Despite *Payton's* "firm line," some circuits have eschewed *Payton's* bright-line rule in favor of the constructive entry doctrine, holding that officers violate *Payton* when they coerce a suspect out of the home to effectuate a warrantless arrest. *See Morgan*, 743 F.2d at 1166–67. An arrest requires either physical force such as handcuffing or submission to the assertion of authority. *See California v. Hodari D.*, 499 U.S. 621, 626 (1991). However, submission to the assertion of authority only occurs if, given the totality of the circumstances, a "reasonable person would have believed he was not allowed to disregard police and go about his business." *Hodari D.*, 499 U.S. at 628; *see also United States v. Mendenhall*, 466 U.S. 544, 554 (1980) (adhering to the view that a person is only seized when, by physical force or show of authority, his freedom of movement is restrained, and he is not free to disregard and walk away).

In *United States v. Mendenhall*, this Court provided examples of circumstances that might indicate a seizure, even where a suspect does not attempt to leave, which include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 466 U.S. at 554. Under

Mendenhall, the inquiry is whether a reasonable person would feel free to decline the officers' requests and go about his business. *Id.* at 555 (holding that suspect's voluntary consent was not coerced where an officer without uniform, guns drawn, or any showing of force, requests compliance rather than commands and questions suspect only briefly). This Court further reasoned that the suspect voluntarily consented because she "was not told that she had to go . . . but was simply asked if she would accompany the officers [,] [t]here were neither threats nor any show of force," and she was only questioned briefly. *Id.* Further, this Court emphasized that the fact that the officers informed the suspect that she was free to withhold her consent significantly lessened the possibility that her consent was coerced. *Id.*

Additional considered factors include: (1) the use of voice amplification systems, *United States v. Maez*, 872 F.2d 1444, 1446 (10th Cir. 1989); (2) forceful knocking, *Reeves*, 524 F.3d at 1163 (concluding that officers knocking for at least twenty minutes constituted coercion); *United States v. Jerez*, 108 F.3d 684, 687 (7th Cir. 1997) (concluding that officers pounding on the door for three minutes was coercive); (3) repeated questions or demands to exit the building, *Jerez*, 108 F.3d at 687; (4) the time of day or night the encounter takes place, *Reeves*, 524 F.3d at 1164 (explaining that officers' attempted to coerce the defendant to exit his dwelling between 2:30 and 3:00 a.m.); *Jerez*, 108 F.3d at 687 (discussing that officers knocked on the door at 11:00 p.m.); (6) the number and location of police vehicles in relation to the dwelling, *Morgan*, 743 F.2d at 1161; and (7) driving armored vehicles onto the front lawn of a dwelling, *Ewolski v. City of Brunswick*, 287 F.3d 492, 499 (6th Cir. 2002).

The location of the arrested person, rather than the arresting officer, is only relevant in determining whether a seizure occurred when police conduct is inherently coercive. *See Morgan*, 743 F.2d at 1166 (citation omitted) (emphasizing that controlling movements of suspects inside a

home with weapons "greatly extends the 'reach' of the arresting officers")). In *Morgan*, the court held that the suspect was arrested inside his home where police coerced him to appear at his door and comply with officers' commands. *Id.* The suspect was inside when at least nine officers, acting on a pre-formed plan to arrest, surrounded the home, drove an unmarked vehicle into the yard with its lights off, flooded the residence with spotlights, and summoned the suspect outside using a bullhorn. *Id.* at 1161. The court reasoned that because the arrest was preplanned rather than the result of a field investigation, and because the suspect appeared at the door only due to coercive police conduct, the arrest occurred inside the home. *Id.*

An officer's use of language which conveys to a suspect inside of their home that an arrest is being made, coupled with controlling of the suspect's further movements, constitutes a seizure within the home. *See Allen*, 813 F.3d at 85. In *Allen*, the court held that the suspect's submission to the officers' assertion of authority while standing in his doorway violated *Payton*. *Id.* Four officers arrived at the suspect's apartment to arrest him, and the suspect spoke with the officers for five to six minutes from his doorway while the officers remained on the sidewalk. *Id.* at 78. When an officer informed the suspect that he would need to go to the police station to be processed for assault, the suspect asked to go upstairs to retrieve his shoes and inform his daughter, at which point the officers stated they would need to accompany him. *Id*. at 79. According to the court, "[b]y advising [the suspect] that he was under arrest, and taking control of his further movements, the officers asserted their power over him *inside his home*." *Id.* at 86 (emphasis in original).

Applying the constructive entry doctrine in this case, it is clear that Defendant's arrest did not violate *Payton*. To begin this analysis, none of *Mendenhall's* factors indicating a seizure were present in Defendant's arrest, thus the totality of the circumstances would not have led a

reasonable person to believe that he was not free to ignore the agents and continue about his business.

First, there was no "threatening presence of several officers" during the encounter. Unlike in *Morgan*, where at least nine officers surrounded the home with spotlights, only two agents were present during Defendant's arrest. (R. 21.) It cannot be reasonably said that two officers present during an arrest—without using spotlights—amounts to coercive police activity. Further, neither of the Agents ever drew a weapon during the encounter. Unlike the police in *Johnson*, who had their weapons drawn when the suspect answered the door, the Agents never drew their weapons, as they merely had their hands on their holsters for safety precautions considering Defendant's heightened and irritated demeanor. (R. 11, 26.). Additionally, the Agents never physically touched Defendant's person until he exited his home and was handcuffed outside. (R. 23.)

Lastly, the language and tones of voice used by the Agents did not indicate that compliance was being compelled or that Defendant would be detained. Unlike the language used by the officers in *Allen*, which expressed to the suspect inside of his home that he needed to go to the station to be processed for assault, the Agents merely requested that Defendant come outside to answer questions for their investigation. (R. 11–12.). Additionally, SA Herman informed Defendant that they could speak with him another time if it was better for him further displaying the voluntariness of the interaction. (R. 12.) Although the Agents' tone of voice was firm, it does not remotely compare to the level of intrusion shown by the officers in *Morgan*, who utilized a blowhorn to affect their commands. (R. 11–12.) SA Herman initially greeted Defendant by saying "Hello" and asking him how he was doing, while SA Simonson identified them as FBI

agents and calmly requested Defendant to step outside. (R. 11.) Thus, according to *Mendenhall's* factors, Defendant was not "seized" inside of his home.

Furthering the constructive entry doctrine's analysis, none of the additional factors that would indicate coercive police activity were present during Defendant's arrest. First, unlike the officers in *Morgan* who used a blowhorn to summon the suspect, the Agents did not use any voice amplifying devices. (R. 11–12.) Second, the Agents did not forcefully knock on Defendant's door. Unlike the officers in *Jerez*, who "pounded" on the door for three minutes, or the officers in *Reeves*, who knocked for at least twenty minutes, SA Simonson knocked on Defendant's door only three knocks upon arrival. (R. 11.) Third, the Agents did not excessively repeat their request for Defendant to come outside, as during the first couple of minutes Defendant did not refuse but appeared unsure, and once said no, the Agents informed him that they could come back another time. (R. 11–12.) After Defendant's single response of "no" to coming outside, the Agents repeated their request once more, at which point Defendant voluntarily exited his house. (R. 12.)

Concerning the fourth additional factor, Defendant's arrest occurred at 4:20 p.m., unlike *Reeves*, which occurred between 2:30 and 3:00 in the morning. (R. 11–12.) Finally, unlike in *Morgan* or *Ewolski*, where officers drove vehicles onto suspect's yards, Special Agents Herman and Simonson's singular unmarked vehicle was parked on the street. (R. 29.)

Ultimately, SA Herman and Simonson's conduct cannot be said to amount to coercive activity compelling Defendant to leave his home to effect his arrest. It cannot be reasonably concluded that two agents, arriving in an unmarked vehicle in the early afternoon, wearing khakis and black polos, each carrying standard issued handgun tucked into their holsters, and never requesting anything more than to speak with them outside equates a forceful show of

authority signifying to a reasonable person that his freedom of movement was constrained. (R. 29.)

Therefore, even under the constructive entry doctrine, Defendant's arrest remains constitutionally proper.

II. Fiona Reiser's voluntary consent, given as a co-inhabitant with apparent authority over the residence, authorized SA Ristroph's warrantless search of the closed container, bringing the search within Fourth Amendment bounds.

While the Fourth Amendment generally prohibits warrantless searches of a person's home, this requirement is not necessary when a party has given an officer consent to search the premise or object. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). Here, Ms. Reiser voluntarily allowed SA Ristroph to enter her and Defendant's shared residence to investigate the home. (R. 13, 14–15.) Thus, the only questions are whether she had the authority to consent to the search of the cardboard box that contained items that Defendant planned to use to kidnap Ms. Wildrose, and whether the scope of that consent excluded the cardboard box. Here, Ms. Reiser clearly had apparent authority to consent to its search given that the box was in a shared area and had no distinguishing marks that would lead a reasonable officer to question her authority over the box. Additionally, given that it was reasonable for SA Ristroph to look through the box in furtherance of his investigation, Ms. Reiser's scope of consent did not exclude the box. Thus, this Court should affirm the Fourteenth Circuit's decision that Ms. Reiser's effective consent to the search of the residence included the cardboard box.

A. Fiona Reiser had the apparent authority to give SA Ristroph consent to search the closed container.

The Fourteenth Circuit correctly held that Ms. Reiser had apparent authority to consent to the search of the cardboard box. The Fourth Amendment admits the warrantless searches of

closed containers when the Government reasonably believes that the third-party giving consent possesses apparent authority over the premises. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990). Determination of consent must be judged against an objective standard to determine whether the facts contemporaneously available to the officer warrant a man of reasonable caution to believe that the consenting party had authority over the premises. *Id*. at 188. The Fourth Amendment requires that factual determinations by the Government in such situations need not "always be correct" but should always be *reasonable*. *Id*.

Despite *Rodriguez's* clear holding that factual determinations underlying consent need not be correct, some courts nonetheless follow an ambiguousness approach, suggesting that in ambiguous circumstances where ownership of a nondescript container is uncertain, officers must ask follow-up questions of the consenting party to ascertain true ownership. *See, e.g., United States v. Taylor*, 600 F.3d 678, 681 (6th Cir. 2010). On the contrary, other courts follow an obviousness approach and hold that an officer does not need to ask further questions regarding the true ownership of a container unless it is objectively obvious that the consenting party lacks consent over the item to be searched. *See, e.g.*, *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000). Because Ms. Reiser had apparent authority over the closed container under either approach and the scope of her consent did not exclude the box, this Court should find that the warrantless search of the box did not violate the Fourth Amendment.

i) The obviousness approach reflects Rodriguez's foundational principles and should be recognized by this Court.

This Court should apply the obviousness approach because it reflects *Rodriguez's* foundational principle that the Fourth Amendment requires that factual determinations be *reasonable*, not *perfect*.

In *Rodriguez*, this Court articulated that determining a basis for authority to consent to a search is the kind of recurring factual determination where officers must be expected to apply their judgement; and all the Fourth Amendment requires is that their judgement be reasonable. *Rodriguez, 497 U.S.* at 186. Specifically, this Court held that determinations of consent to enter must "be judged against an objective standard: would the facts available to the officer at the moment . . . 'warrant a man of reasonable caution in the belief' that the consenting party had authority over the premises." *Id*. at 188 (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)).

Crucially, the obviousness approach reflects this Court's rationale in *Rodriguez* that factual determinations in ascertaining the consent to search do not need to be perfect. Requiring an officer to ask further questions in ambiguous circumstances to ascertain consent undermines the Fourth Amendment's requirement that searches be *reasonable*. *Rodriguez*, 497 U.S. at 188. Additionally, requiring an officer to ask questions in ambiguous circumstances creates the possibility for judicial hindsight bias if a judge feels that more questions could have been raised. By invoking the ambiguousness approach, Defendant suggests that this Court requires that ownership over a premise or container need be concretely ascertained. But the Court has never held this. The obviousness approach's justifications are not only proper in ascertaining apparent authority but grounded in the same constitutional values that this Court has recognized in *Rodriguez*. Thus, this Court should apply the obviousness approach in its determination of whether Ms. Reiser had the apparent authority to consent to the search of the cardboard box.

ii) It was not objectively obvious that Ms. Reiser lacked authority over the cardboard box; therefore, the search of the box was valid under the obviousness approach.

It was not objectively obvious to a reasonable officer that the box did not belong to Ms. Reiser given that it had no distinguishing markings and was placed in a common area; therefore,

under the obviousness approach, the search of the box was valid. A container is objectively obvious to belong to someone else when it has distinguishing markings that denote its ownership or the person consenting asserts that they do not have ownership over the container. *See Melgar*, 227 F.3d at 1041 (finding that an officer's search of a coin purse with no distinguishing markings did not violate the Fourth Amendment even though the purse did not belong to the consenting party); *see also United States v. Fultz*, 146 F.3d 1102, 1106 (9th Cir. 1998) (stating that property owner did not have apparent authority over defendant's closed containers after making it clear to law enforcement that the containers were not hers); *United States v. Welch*, 4 F.3d 761, 765 (9th Cir. 1993) (stating the male defendant did not have apparent authority to allow for the search of his girlfriend's purse located in his car).

In *Melgar*, the court analyzed whether the Fourth Amendment was violated after an officer, with the consent to search a hotel room given by the renting party, conducted a search of a coin purse found within the room, even though there were multiple people present other than the renting party. *Melgar*, 227 F.3d at 1041–2. The court noted that the officer did not ask exactly who was staying in the room nor did he ask if the purse belonged to the consenting party. *Id.* at 1039. However, the court found no Fourth Amendment violation in the search because the facts available to the officer merely revealed that there was a forged check in a purse within the room, although he was not told which purse. *Id*. at 1041–2. Additionally, the purse itself had no markings indicating that it did not belong to the consenting party. *Id*. Thus, given the available facts given to the officer at the time of the investigation, the search of the purse was constitutionally permissible. *Id*.

In this case, it was not objectively obvious to a reasonable officer that the box did not belong to Ms. Reiser, and therefore, under the obviousness approach, the search of the box was

valid. First, the cardboard box had no distinguishing markings indicating that it did not belong to Ms. Reiser. Like the purse in *Melgar*, which had no markings indicating it was not owned by the consenting party, there were no markings on cardboard box to indicate that Ms. Reiser was not its owner, as it was plain and non-descript with no distinguishing markings connecting it to anyone specific. (R. 14, 37). Further, the only facts available to SA Ristroph at the time of the search was that the entirety of the first floor was a common area used by both Ms. Reiser and Defendant, and only the loft area was strictly used by Defendant. (R. 15). The fact that the box was placed on the second step of the staircase, which was located within the main living area of the home where Ms. Reiser could have placed it without *ever* ascending the stairs, would lead an objectively reasonable officer to believe that the box belonged to her. (R. 13, 15.) Therefore, under the obviousness approach, SA Ristroph's search was constitutionally valid.

iii) Even if this Court were to apply the ambiguousness approach, SA Ristroph's search of the closed container was still valid.

Even if this Court were to apply the ambiguousness approach, SA Ristroph's search of the cardboard box was valid because its mutual authority was not ambiguous. Mutual authority over an item is ambiguous when the surrounding facts do not clearly signal that a container is subject to mutual use. *See, e.g., Taylor*, 600 F.3d at 681.

In *Taylor*, the Court analyzed whether an officer's search of a closed men's shoebox violated the Fourth Amendment after receiving consent from the defendant's girlfriend. *Id*. The box itself was a men's shoebox covered by men's clothing, stored in a closet that also stored children's clothing and toys; however, the defendant's girlfriend had no children. *Id*. The court held that the outside markings of the shoebox and the surrounding items would lead a reasonable officer to question whether the girlfriend had mutual use of the container. *Id*.

Here, there are no surrounding facts that make Ms. Reiser's common authority over the box ambiguous, thus the search was valid even under the ambiguousness approach. Unlike the shoebox in *Taylor*, which had questionable markings and surrounding items, the cardboard box had no markings or surrounding items which would have led SA Ristroph to question whether the box was mutually used by Ms. Reiser and Defendant. (R. 13, 15–16.). Additionally, although the box was placed on the second step of the staircase leading to the loft area, (R. 13, 15–16.), this would not lead a reasonable officer to question the box's mutual use because it is entirely reasonable for someone to store items on a staircase so close to a shared space. Had the box been placed further up on the staircase in such a location as to require one to ascend the steps to access it, clear intent would have been shown that it was under Defendant's control and intended to be placed in the loft. On the contrary, placing the box on the second step was something Ms. Reiser could have done without leaving the shared common space of the first floor or ever stepping foot onto the staircase. As such, there are no surrounding circumstances that would lead a reasonable officer to question the box's mutual use, and therefore, even under the ambiguousness approach, SA Ristroph's search was valid.

Therefore, this Court should affirm that Ms. Reiser had apparent authority to consent to the search of the cardboard box.

B. Nothing in Ms. Reiser's consent limited SA Ristroph's authority to search the closed box, and the scope of her consent therefore encompassed the container at issue.

Ms. Reiser's consent to search the residence did not exclude the cardboard box. The scope of a search is defined by its expressed object, and the standard for measuring consent is based on objective reasonableness, i.e., what a reasonable person would understand by the exchange between the officer and the consenting party. *Florida v. Jimeno*, 500 U.S. 248, 251

(1991) (citing *United States v. Ross*, 456 U.S. 798 (1982)) (citations omitted). The Fourth Amendment does not require explicit authorization to search closed containers after consent to search an area has been received. *See*, *e.g.*, *Jimeno*, 500 U.S. at 251; *United States v. Saadeh,* 61 F.3d 510, 518 (7th Cir. 1995).

In *Lemmons*, the court examined whether the officer was able to search the defendant's computer where inappropriate pictures of minors were found after initially requesting to search the home for videotaping devices pointing at his neighbor's window. *United States v. Lemmons*, 282 F.3d 920, 924–25 (7th Cir. 2002). The court found that although the initial consent to search was limited to the search for videotaping devices within the home, the scope of consent was then extended to include the defendant's computer when the defendant voluntarily allowed the search of the computer during the search. *Id.*

Here, Ms. Reiser consent to a broad search of the residence did not exclude the cardboard box. (R. 13, 14–15.) Unlike the officer in *Lemmons*, who made specific search requests, SA Ristroph did not specify what exactly he was investigating even after Ms. Reiser asked, and Ms. Reiser nonetheless allowed SA Ristroph to conduct his search inside the residence. (R. 13, 14–15.) Given that their initial interaction regarded a general investigation, a reasonable person would understand that a general investigation permitted a search of anything within the home. (R. 13, 14–15.) Additionally, SA Ristroph did not need to obtain explicit consent to search the container given that it was in an area which he had been allowed to search. (R. 13, 14–15.) Therefore, the scope of Ms. Reiser's consent was not limited to exclude the search of the box.

III. Rule 806 of the Federal Rules of Evidence forbids the use of extrinsic evidence of specific acts to impeach Ms. Copperhead's character for truthfulness, notwithstanding her unavailability to testify at trial.

This Court should affirm the Fourteenth Circuit's holding that the district court did not err in excluding a letter concerning Ms. Copperhead's undergraduate academic dishonesty and a falsified job application as extrinsic hearsay to attack her character for truthfulness.

Rule 806 provides that once a hearsay declarant's testimony has been admitted, 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." Fed. R. Evid. 806. However, Rule 608(b) limits this inquiry by forbidding the use of extrinsic evidence, unrelated to prior convictions under Rule 609, to prove specific instances of a witness's conduct to attack or support the witness's character for truthfulness. Fed. R. Evid. 608(b). At the court's discretion, it may allow direct questioning on cross examination of the hearsay declarant into the specific instances of prior conduct only if they are probative of truthfulness, without extrinsic evidence. *Id.*

The Second Circuit has suggested that the introduction of extrinsic evidence for character impeachment is permissible under Rules 806 and 608(b) when the hearsay declarant is unavailable to testify and thereby cannot be subject to cross examination. *United States v. Friedman*, 854 F.2d 535, 570 (2d Cir. 1988). Most lower courts interpreting Rule 806 have consistently found that the plain language of the rule places the ordinary limits of impeachment of a testifying witness, including 608(b)'s explicit barring on extrinsic evidence of specific instances of conduct. *See United States v. Saada*, 212 F.3d 210, 221 (3d Cir. 2000) (stating that "the unavailability of one form of impeachment, under a specific set of circumstances, does not justify overriding the plain language of the Rules of Evidence."); *United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991) (stating that "Rule 806 extends the privilege of impeaching the declarant of a hearsay statement but does not obliterate the rules of evidence that govern how

impeachment is to proceed"); *Bonin v. Calderon*, 59 F.3d 815, 829 (9th Cir. 1995) (stating that Rule 608(b) prohibits the use of extrinsic evidence of prior conduct to impeach the credibility of a witness); *United States v. Rivera*, No. 24-2013, 2025 LEXIS, 148730 at *39 (10th Cir. June 16, 2025) (holding that extrinsic evidence of specific conduct unrelated to the case was inadmissible to impeach a witness under Rule 608(b)).

This narrow application of the rules gives effect to the legislative intent and fundamental purpose of Rules 806 and 608(b).

This Court has long established that plain statutory language is proper when it does not result in absurd or impracticable results, and that the courts' only duty is to apply and enforce the language accordingly. See, e.g., *Caminetti v. United States*, 242 U.S. 470, 485 (1917). In *Caminetti*, this Court stated that statutory words are to "to be used in their presumed sense, unless a contrary appears, and to the meaning commonly attributed to them." *Id.* at 485–86.

Here, the rules are plain and unambiguous. Under Rule 806, a hearsay declarant is treated as though they were testifying witnesses, Fed. R. Evid. 806, and under Rule 608(b), the character for truthfulness of a testifying witness cannot be impeached through extrinsic evidence, Fed. R. Evid. 608(b). The purpose of Rule 608(b) is to safeguard the substantial possibility of abuse by entirely prohibiting the use of extrinsic evidence to avoid "unfair prejudice, confusion of issues, or misleading the jury." Fed. R. Evid. 608(b) (Notes of Advisory Committee on Proposed Rules); *see also* Fed. R. Evid. 608 advisory committee's note to 1972 amendment (stating that the court may exclude relevant evidence if its probative value is substantially outweighed by danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury . . .). Accordingly, this Court should find that the district court did not err in excluding extrinsic

evidence to attack Ms. Copperhead's character for truthfulness under the Rules of Federal Evidence.

A. The plain language of Rules 806 is unambiguous and leaves no room for interpretation to expand the scope of Rule 806.

The plain language of Rule 806 is ambiguous and does not expand the scope of permissible impeachment beyond what the Federal Rules of Evidence explicitly allow. *See Saada*, 212 F.3d at 221; *Finley*, 934 F.2d at 839; *Rivera*, 2025 LEXIS 148730, at *39.

The Second Circuit has suggested that a party who introduces extrinsic evidence to impeach the character evidence of a non-available hearsay declarant does not offend Rule 806 if the offered evidence is probative of truthfulness. *Friedman*, 854 F.2d at 570. The court reasoned that extrinsic evidence is a party's only resort to impeach a non-available hearsay declarant. *Id.* This expansive interpretation fails because it ignores the unambiguous language of Rule 806 treating a hearsay declarant as a testifying witness whose impeachment is limited by Rule 608(b). Further, this expansive interpretation ignores the limitations imposed by Rule 608(b) and its purpose to safeguard from substantial abuse entirely.

In *Saada*, the court held that extrinsic evidence of specific instances cannot be used to impeach the character for truthfulness of a hearsay declarant. *Saada*, 212 F.3d at 210. The court noted that the only argument to deviate from the clear language of the rules is that extrinsic evidence is the only available avenue to impeach the credibility of an unavailable declarant. *Id.* at 221. However, the court was not influenced by this argument because both hearsay declarants as well as testifying witnesses may be impeached through reputation or opinion evidence under Rule 806(a) and evidence of prior inconsistent statements under Rule 613. *Id*. Additionally, the court notes that the implicit language of Rule 806 creates no exception for the use of extrinsic evidence of specific instances of misconduct to impeach a hearsay declarant but makes an

explicit allowance of impeachment through prior inconsistent statements when the declarant is not present. *Id*. at 226. Specifically, Rule 806 makes an exception to Rule 613's requirement that a declarant be present to the use extrinsic evidence to impeach a witness's character for truthfulness using prior inconsistent statement but makes no exception for the use of extrinsic evidence to impeach a witnesses' character for truthfulness. *Id*. As such, the court found that the plain language interpretation of Rule 806 did not allow for the use of extrinsic evidence of prior instances of conduct to impeach the character for truthfulness of a witness. *Id*. 221-22.

A plain language interpretation of Rule 806 is necessary to uphold the purpose of the Federal Rules of Evidence. Defendant concedes that Rule 806 intends to place hearsay declarants on the same footing as a testifying witness yet intends to circumvent Rule 608(b) which explicitly applies to live witnesses. (R. 49.) Analogous to the hearsay declarant in Saada, Ms. Copperhead made admissible hearsay statements but was unable to testify at Defendant's trial. (R. 43–44, 46.). The Third Circuit acknowledged that upholding the ban on extrinsic evidence for character impeachment prevents its entire use unless the testifying witness knows about the hearsay declarant's misconduct. *Saada*, 212 F.3d at 222. Nevertheless, the court held that the drawbacks do not override the plain language of Rules 806 or 608(b), nor do they override the purpose of 608(b) to avoid misleading the jury. *Id.*

Here, the admission of the college letter and the job application, both submitted a year before Defendant began planning his crime, do no more than mislead the jury to believe that Ms. Copperhead is a liar and, in turn, undermines the purpose of Rule 608(b). (R. 9, 10.) As such, this Court should hold that the plain language of Rule 806 is subject to the limitations imposed by Rule 608(b), and therefore, Ms. Copperhead's college letter and job application were properly excluded.

B. Even if this Court permitted extrinsic evidence to impeach Ms. Copperhead's character for truthfulness, the proposed evidence is inadmissible under Rule 806 because it is not probative to Ms. Copperhead's character for truthfulness at the time she made the statement.

Defendant's attempt to admit a letter concerning Ms. Copperhead's undergraduate academic dishonesty and a falsified job application are not probative of her character for truthfulness at the time she made the admitted statement. Rule 401 makes a two-part test to determine whether such evidence is relevant: (1) if it has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action. Fed. R. Evid. 401. A district court has the ability to admit or exclude evidence, if based on a permissible interpretation of the rules, and its decision to do so is reviewed for abuse of discretion. *See*, *e.g.*, *GE v. Joiner*, 522 U.S. 136, 141 (1997); *Saada*, 212 F.3d at 220. The abuse of discretion inquiry asks whether the decision to admit or exclude evidence was manifestly erroneous. *Joiner*, 522 U.S. at 118.

In *Rivera*, the Tenth Circuit examined whether the district court had permissibly prohibited cross examination of a witness about a prior instance in which she had lied to a police officer about having a driver's license. *Rivera*, 2025 LEXIS 148730, at *39. The witness was the defendant's 12-year-old victim testifying about their sexual relationship. *Id.* The Court held that the district court had not erred in refusing to allow cross examination into the incident because the gravity of the prior incident did not remotely suggest that the witness would make such serious allegations against the defendant. *Id.*

Here, Ms. Copperhead's undergraduate letter and job application were properly excluded because they are not probative to her truthfulness at the time she made her declarations to Mr. Kobler. In the context of Rule 401, the inclusion of the extrinsic evidence that Ms. Copperhead

lied on a school assignment and a job application do not make the fact that she made a statement regarding Defendant's involvement in the kidnapping scheme any more or less probable. While Ms. Copperhead's statement is of consequence to the determination of the crime, (R. 57.), the probative value of the evidence does not surpass its prejudicial value. Like the witness in *Rivera*, whose prior incident with the police was unrelated to and of much less gravity than the incident at hand, Ms. Copperhead's prior academic dishonesty and falsified job application are entirely unrelated to and of much less gravity than Defendant's attempt to kidnap Ms. Wildrose. The fact that Ms. Copperhead lied on two prior instances trying to accomplish academic and career endeavors do not suggest that she would make such serious allegations against the Defendant's participation in the kidnapping scheme. The inclusion of this evidence would do no more than mislead a jury to believe that lying in a class or a job application means that Ms. Copperhead would lie about a felony offense.

Therefore, even if this Court were to allow extrinsic evidence to impeach Ms. Copperhead's character for credibility, the district court's decision to exclude such evidence was not an abuse of discretion.

CONCLUSION

For the foregoing reasons, this Court should affirm the Fourteenth Circuit's decision (1) finding that Defendant's arrest did not violate the Fourth Amendment, (2) the warrantless search of the cardboard box did not violate the Fourth Amendment, and (3) excluding extrinsic evidence to impeach a witness using prior instances of misconduct under Rule 806.

Respectfully submitted,

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