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 THE PETITIONER

TEAM T34

Counsel for the Petitioner

QUESTIONS PRESENTED

I. Whether, under *Payton v. New York*, the Fourth Amendment is violated when law enforcement officers, who remain outside, command a suspect inside the home to step outside and arrest the suspect outside the home without a warrant.

II. Whether the Fourth Amendment is violated when law enforcement conducts a warrantless search of a closed container located in a shared residence after obtaining a co-occupant's consent to search the residence, without specifically inquiring into ownership of the container.

III. Whether, under Rule 806 of the Federal Rules of Evidence, extrinsic evidence of specific instances of conduct of a hearsay declarant may be admitted to impeach the declarant's character for truthfulness when the declarant is unavailable to testify at trial.

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STATEMENT OF THE CASE

I. Factual Background

This case arises from an alleged attempted kidnapping plot targeting Jodie Wildrose, the Under Secretary for Rural Development in the United States Department of Tourism. The Government alleged that Atticus Hemlock "knowingly and willfully took substantial step[s]" toward kidnapping Wildrose on account of the performance of her official duties between March 28, 2024, and April 2, 2024. R. 1-2.

On April 2, 2024, FBI Special Agents Hugo Herman and Ava Simonson arrived at Atticus Hemlock's house and knocked on his door. R. 11. In the span of twelve minutes, between 16:08 – 16:20 ET, the two agents urged Atticus Hemlock to "come outside" six times. R. 11-12. Atticus Hemlock begged to be "left alone", that he "[doesn't] want to come outside", and that he did not want to talk further. R. 11-12. The agents observed "chloroform bottles" in Atticus Hemlock's house and considered his unsolicited mention of Wildrose as adequate for an arrest. R. 12. They then called Special Agent Kiernan Ristroph for backup. R. 12.

While waiting for Ristroph, Herman and Simonson commanded Atticus Hemlock to "[g]et outside right now." R. 12. Atticus Hemlock hesitated but complied, and he was handcuffed "once he stepped onto the ground outside his home." R. 53. During a search of Atticus Hemlock's person incident to arrest, Herman seized a spiral-bound notebook from Atticus Hemlock's pants pocket. R. 23. The notebook was "open to pages detailing [Atticus Hemlock] and Copperhead's plans to kidnap Wildrose." R. 53.

Meanwhile, Iris Copperhead headed to a cabin to meet Atticus Hemlock and his girlfriend, Fiona Reiser, for dinner. R. 15. Minutes later, Boerum Village resident Theodore Kolber was walking in Joralemon State Park when he saw Iris Copperhead "bursting out of the

woods onto the path" in front of him. R. 42. Kolber observed Iris Copperhead was shaking, pale, and harried. R. 42. When Kolber asked if she was okay, Iris Copperhead yelled: "I can't believe I saw him get arrested. It's all his fault. It was all Atticus' idea–NOT MINE! I can't run a business from prison!" R. 43. Iris Copperhead was arrested later and "died from an acute aortic rupture" the same night. R. 46.

At approximately 16:30, later that afternoon, Special Agent Ristroph arrived at the cabin while Herman and Simonson were preparing to transport Atticus Hemlock. R. 13. Ristroph waited for Fiona Reiser, who returned about twenty minutes later. R. 13. Ristroph identified himself, informed Fiona Reiser of Atticus Hemlock's arrest, and said he was there to investigate; he asked to "take a look around the residence," and Fiona Reiser allowed him inside. R. 13. During the search, Ristroph noticed stairs leading to the second floor and asked about them. R. 15. Fiona Reiser said she did not sleep up there and explained that the stairs led to a loft that Atticus Hemlock used "for storage and an office space." R. 15. Fiona Reiser also indicated that she did not know what Atticus Hemlock kept up there. R. 15. Ristroph did not enter the loft. R. 13. However, Ristroph noticed an old cardboard box with closed flaps and no identifying markings on one of the bottom steps of the staircase. R. 15. He opened the box and found rope, a folding knife, zip ties, duct tape, ski masks, gloves, and chloroform bottles. R. 15-16. He photographed the box and contents as evidence. R. 15.

Separately, Atticus Hemlock sought to impeach Iris Copperhead's credibility after her statement was introduced through Kolber. R. 46. The proffered impeachment materials included (1) "a letter from the Board of Academic Integrity at Court Street College" describing a May 2023 violation stemming from Iris Copperhead's "dishonest use of artificial intelligence" to complete a final assignment, which resulted in her failing a capstone course, and (2) a January

2024 Executive Assistant job application to the Boerum Village Mayor's Office in which Iris Copperhead "dishonestly claimed" she graduated from Court Street College in May 2023 even though she "never obtained the requisite credits to graduate." R. 9-10.

II. Proceedings Below

A federal grand jury indicted Atticus Hemlock for attempted kidnapping of Jodie Wildrose, a United States government officer on account of her official duties, in violation of 18 U.S.C. §§ 1201(a)(5) and 1201(d). The indictment alleged that Atticus Hemlock took substantial steps toward unlawfully seizing, confining, kidnapping, abducting, or carrying away Jodie Wildrose by acquiring restraints and other items, preparing chloroform, and conducting reconnaissance, in anticipation of Wildrose's April 8 trip to Boerum Village.

Atticus Hemlock was tried in the United States District Court for the Northern District of Boerum. At trial, the Government called Theodore Kolber, who testified to Iris Copperhead's statement in the park. Atticus Hemlock objected on hearsay grounds. The Government responded that the statement was an excited utterance under Rule 803(2). The trial court overruled the objection, reasoning that the direct examination established that the statement related to the startling event of Atticus Hemlock's arrest and that the declarant was "clearly under the stress of excitement." Atticus Hemlock then sought to introduce extrinsic evidence to impeach Iris Copperhead's character of truthfulness. Specifically, he sought to present the Court Street College academic-integrity letter and a falsified job application. The Government objected based on Rule 608(b) that extrinsic evidence is barred unless Iris Copperhead is available to be cross-examined. The District Court sustained the Government's objection, ruling that Atticus Hemlock "may not introduce any extrinsic evidence regarding the academic integrity policy

violation or the alleged fraudulent job application for the purposes of impeaching the hearsay declarant."

The jury found Atticus Hemlock guilty, and the District Court entered judgment of conviction on August 12, 2024. The court then imposed a sentence of ten years in prison on October 17, 2024. Atticus Hemlock appealed to the United States Court of Appeals for the Fourteenth Circuit, raising three issues challenging his conviction.

The Court of Appeals affirmed. It held that the arrest of Atticus Hemlock outside his home after he was asked to exit the home by law enforcement did not violate the Fourth Amendment, evidence seized from a closed container from the Defendant's cabin was properly admitted, and extrinsic evidence to impeach Iris Copperhead was properly excluded. This petition for certiorari followed.

SUMMARY OF THE ARGUMENT

In their decision below, the Court of Appeals adopted three rules that run counter to the purpose of the Fourth Amendment and the purpose of the Federal Rules of Evidence. Its first rule, which rejects the constructive entry doctrine, is counter to this Court's precedent in *Payton v. New York* because it refuses to recognize the curtilage of the home as part of the home. Further, the rule that the Court of Appeals adopted allows for situations where a person can be forced out of their home by police action and have the privacy of their home invaded without a warrant. The constructive entry doctrine, instead, preserves the integrity of the Fourth Amendment by recognizing the strong privacy rights that one enjoys within his home. This Court should therefore adopt the constructive entry doctrine in order to preserve the purpose of the Fourth Amendment and to preserve one's privacy rights in one's home.

In its second rule, the Court of Appeals adopted the Second and Seventh circuits' obviousness test for the search of closed containers pursuant to the apparent consent of a co-occupant who does not have common authority to consent to the search of the container itself. This rule flies against the reasonableness requirement of the Fourth Amendment by allowing officers to turn a blind eye to indicia that they do not have consent to search a closed container. This Court should instead adopt the Sixth Circuit's further inquiry test and require officers, when faced with a situation where the ownership of a closed container is ambiguous, to further inquire into the ownership of the container to determine whether they have consent to search it. This test requires only reasonableness on the part of the officer and should be adopted by this Court.

In its third rule, the Court of Appeals erred in its interpretation of the Federal Rules of Evidence. The Court of Appeals' interpretation of the statute fundamentally creates an evidentiary imbalance that can be rectified by greater deference to Rule 806. Ultimately, the Court of Appeals erred in that it interpreted the Federal Rules of Evidence in a way that does not allow for unavailable hearsay declarants to be impeached by extrinsic evidence of prior untruthfulness, which does not allow for each litigant to fully develop their testimony. The Court of Appeals' interpretation of the Federal Rules of Evidence is counter to the demands of justice and fairness. This Court should interpret the Federal Rules of Evidence to allow for unavailable hearsay declarants to be impeached based on extrinsic evidence of prior acts of untruthfulness.

ARGUMENT

I. Under *Payton v. New York*, The Fourth Amendment Was Violated When The Officers, Who Remained Outside, Commanded Atticus Hemlock to Step Outside and Arrested Him Outside His Home Without a Warrant.

The Fourth Amendment was designed by the Framers with the intention of protecting people from government overreach. The original draft of the Amendment that was introduced in

the House of Representatives included only one clause that did not expressly restrict warrantless searches or seizures. *See Payton v. New York*, 445 U.S. 573, 584 (1980). However, the final Amendment we see today contains two clauses, the first of which protects against unreasonable searches and seizures, and the second, which requires that warrants be "particular and supported by probable cause." *Id.*

The Amendment states outright: "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. The amendment has been interpreted to mean that warrantless arrests inside a person's home are unreasonable. *Id*. at 586. More specifically, the famous line from *Payton* clearly highlights this Court's dedication and commitment to protecting the Fourth Amendment: "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house." *Id.* at 590. In fact, this Court has held that "when it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

The firm line at the entrance of the house has been reaffirmed again and again by this and lower courts. It is incumbent upon all who wish to uphold justice that this precedent continues to be followed. The first issue of consequence here is determining whether the area immediately outside Atticus Hemlock's home qualifies as being a part of the home for purposes of Fourth Amendment protection. It does.

A. The Area Immediately Surrounding Atticus Hemlock's Home Is Part of The Home That Qualifies for Fourth Amendment Protection Under *Payton v. New York* Because That Area Is Part of The Curtilage, Which This Court has Deemed to be Part of The Home.

The area immediately surrounding Atticus Hemlock's home is considered part of his home for the purposes of Fourth Amendment protection. In *Oliver v. United States*, this Court held that the area "immediately surrounding and associated with the home," also referred to as the curtilage, was "part of the home itself for Fourth Amendment purposes." *Id*. (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). In the past, when determining whether an area outside the home should be classified as curtilage for Fourth Amendment purposes, this Court has used four factors:

(1) The proximity of the area claimed to be curtilage to the home,
(2) Whether the area is included within an enclosure surrounding the home,
(3) The nature of the uses to which the area is put, and
(4) The steps taken by the resident to protect the area from observation by people passing by.

United States v. Dunn, 480 U.S. 294, 301 (1987).

However, it is prudent to note that the presence of all of these factors is not necessary or sufficient to deem an area as part of the home's curtilage. Rather, these factors "are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration – whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id*. In fact, in *Oliver v. United States*, this Court stated that the common law defined the curtilage of a home by referencing factors "that determine whether an individual reasonably may expect that an area immediately adjacent to their home will remain private." *Oliver v. United States*, 466 U.S. 170, 180 (1984). It is this definition that should precisely lead this Court to conclude that the area immediately surrounding Atticus Hemlock's home was part of the curtilage, and thus, subject to Fourth Amendment protection.

The record clearly states that the officers arrested Atticus Hemlock, without a warrant, right outside his home. In his direct examination, Herman stated that "Special Agent Simonson walked up the front steps and knocked on the doorframe three times, and then came back down to stand next to me." R. 21. Additionally, when asked where they were standing, Herman stated that both he and Simonson were "standing on the ground just outside" Atticus Hemlock's home, and further clarified that they were both "three or four feet from the bottom stair." R. 21. After the officers spoke with Atticus Hemlock the first time, they returned to their car where they decided to arrest him. As stated by Herman, the Agents "did not come with an arrest warrant." R. 22. When they returned to the home, they arrested Atticus Hemlock when he reached "the bottom of the steps and was on the ground." R. 23. The warrantless arrest of a person mere steps from the inside of their home is a clear example of a home's curtilage. As seen in this Court's precedent, the area directly outside and adjacent to a person's home, otherwise known as the curtilage, is effectively a part of the home for Fourth Amendment purposes. Thus, a warrantless arrest taking place in the curtilage of one's home is a violation of the Fourth Amendment and would be treated as if the warrantless seizure had occurred inside the home itself.

B. This Court Should Recognize The Constructive Entry Doctrine Because It Fully Recognizes The Full Extent of Protections Guaranteed by The Fourth Amendment.

The constructive entry doctrine is ripe for this Court's review as the doctrine has caused a circuit split. This Court's guidance and legal interpretation would provide lower courts with much clarity and finality moving forward in cases similar to this one. As articulated by this Court in *Payton*, the warrantless seizure of a person inside their home, absent exigent circumstances, violates the Fourth Amendment. See *Payton v. New York*, 445 U.S. 573, 590 (1980). The constructive entry doctrine, which states that a Fourth Amendment violation can occur even if law enforcement does not physically enter the home, has interpreted the *Payton* ruling to mean

that "the lack of physical entry alone is not dispositive." *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989). Indeed, when a person is coerced and threatened by law enforcement to exit the safety of their home, they might as well have been arrested in their living room as the "privacy of the home is effectively invaded." *Id*. The Fourth Amendment was designed to protect individual liberty from unbridled government intrusion. The constructive entry doctrine most fully protects these liberties and fully recognizes the intent behind the Fourth Amendment. The constructive entry doctrine has been recognized by the Sixth, Ninth, and Tenth circuits. *See United States v. Morgan*, 743 F.2d 1158 (6th Cir. 1984); *United States v. Al-Azzawy*, 784 F.2d 890 (9th Cir. 1985); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989). Many circuits that have not recognized the doctrine do so on a narrow reading of *Payton*, asserting that the language of the opinion is best read as written (the "firm line at the entrance of the house" language should be interpreted literally. However, these courts fail to recognize that the line they have drawn "is less protective of individual liberties and one that turns solely on whether the officers in fact crossed the physical threshold of the entrance to the home." *United States v. Thomas*, 430 F.3d 274, 279 (6th Cir. 2005).

C. This Court Should Recognize The Constructive Entry Doctrine Because The Coercive Tactics Employed by The Officers Essentially Forced Atticus Hemlock Out of His Home.

The warrantless arrest of a person outside their home is a violation of the Fourth Amendment under the constructive entry doctrine. When law enforcement officials use coercive tactics to force someone outside their house to arrest them, they have essentially violated the Fourth Amendment's prohibition on warrantless seizures in the home. In *United States v. Saari*, officers "knocked forcefully on defendant's apartment door," "were approximately four feet away from the defendant," had their weapons drawn, and ordered the defendant to come out.

United States v. Saari, 272 F.3d 804, 806-807 (6th Cir. 2001) (quoting *United States v. Saari*, 88 F. Supp. 2d 835, 838 (W.D. Tenn. 1999)). Additionally, the "officers positioned themselves in front of the only exit from Defendant's apartment with their guns drawn." *Id*. at 808. Similarly, in *United States v. Al-Azzawy*, the Ninth Circuit held that the Appellee in the case "was not free to leave, his freedom of movement was totally restricted, and the officers' show of force and authority was overwhelming." *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir. 1985).

The appropriate test to employ when applying the constructive entry doctrine is whether a reasonable person feels free to leave when they are confronted by law enforcement at their home. In *United States v. Mendenhall*, this Court held that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). This Court went further to delineate situations that may qualify as a seizure: "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." *Id*. In other words, it is situations where a reasonable person feels coerced or compelled to comply where a seizure under the Fourth Amendment occurs. Therefore, the words and conduct of officers can greatly impact whether or not a situation is a seizure under the Fourth Amendment.

The circuits that recognize the constructive entry doctrine understand that the Fourth Amendment is violated under *Payton* when making a warrantless arrest outside the home because using coercion and threats to bring someone outside of their home simply for the purposes of arresting them is the same as doing so in the sanctity of their home. Here, police officers used intimidating tactics to compel Atticus Hemlock out of his home. Like the officers in

United States v. Saari, both of the officers here were standing "three or four feet from the bottom stair." R. 21. Thus, they were sufficiently close to Atticus Hemlock to be able to effectuate a threatening presence. In the span of twelve minutes, the officers told Atticus Hemlock to come outside five times. R. 11-12. Additionally, both officers stood in front of Atticus Hemlock's door, the only exit to his home. R. 17. As Atticus Hemlock did not have the front door shut and only the screen door was closed, both officers were able to see into the home. R. 21. By standing a few feet from the front door where they had a clear view of the inside of the home as well as no physical barrier to Atticus Hemlock hearing them, the police officers' mere presence in front of the cabin violated the safety and privacy of Atticus Hemlock's home.

Even though Herman states that the purpose of their visit to Atticus Hemlock's cabin was to talk, after they returned from their car the second time, the nature of their visit had changed. They walked up to Atticus Hemlock's home the second time with the intention of arresting him then and there. R. 12, 23. In fact, Simonson stated outright that it was their plan to get Atticus Hemlock to step outside his home so that they could arrest him. Simonson stated in clear terms: "We'll get him to come outside and then we'll arrest him." R. 12. The officers had plenty of time to obtain an arrest warrant before returning to Atticus Hemlock's home. They actively and willingly chose not to do so. R. 12. Not only did the agents stand near the only exit to the home, the second time they arrived, they used additional threatening tactics. For example, Herman yelled "Come outside!" R. 12. Simonson yelled immediately after "Get outside right now!" R. 12. The officers also placed their hands on their holsters, indicating their readiness to use their firearms. R. 26. As outlined by this Court in *United States v. Mendenhall*, the presence of both of the officers, the placing of their hands on their holsters, and their demanding and threatening tones of voice would have led any reasonable person to believe that they were not free to leave.

Atticus Hemlock stated, in response to the officers' actions, "Oh god, uh, okay, okay. I'll come out." R. 12. Atticus Hemlock was clearly rattled and intimidated by the officer's actions, and his utterance here demonstrates that he felt he had no choice but to comply with the officer's demand. These actions by both of the officers made it so that they constructively entered and effectively effectuated their arrest of Atticus Hemlock inside his home. The nature of this situation not only made Atticus Hemlock feel, but would cause any reasonable person to feel as if they were unable to leave and must step outside their home in order to avoid further escalation and confrontation.

D. Even If This Court Recognizes The Constructive Entry Doctrine, There Were No Exigent Circumstances Present to Justify The Immediate Warrantless Arrest of Atticus Hemlock.

The warrantless arrest of Atticus Hemlock outside his home was, in essence, done inside his home for Fourth Amendment purposes. The Fourth Amendment was designed in order to protect individual freedoms and due process rights. A strict and narrow reading of this Court's holding in *Payton* fails to fully recognize the protection of these rights. Alternatively, the constructive entry doctrine stays true to the ultimate purpose and intent behind the Fourth Amendment. By commanding Atticus Hemlock to step outside his home through coercive tactics, Herman and Simonson violated *Payton* because they constructively entered Atticus Hemlock's home to effectuate the arrest.

If this Court recognizes the constructive entry doctrine, the government may try to argue, pursuant to this Court's holding in *Payton*, that exigent circumstances were present to justify the warrantless arrest of Atticus Hemlock. However, the facts here do not support this conclusion. There were no exigent circumstances present to justify this warrantless arrest. The burden is on the government to demonstrate exigent circumstances. *See United States v. Morgan*, 743 F.2d

1158, 1162 (6th Cir. 1984). The officers "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). There are very few situations in which a court will likely find that exigent circumstances existed that justify a warrantless seizure: "to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts. *United States v. McConney*, 727 F.2d 1195, 1199 (9th Cir. 1984).

A warrantless arrest of a person is permissible when a suspect presents "an immediate threat to the arresting officers or the public" or when the officers are "in hot pursuit of a fleeing suspect." *Morgan*, 743 F.2d at 1162. Notably, with regards to the "hot pursuit" exception, the exception "may not be invoked merely because police officers find it inconvenient to obtain a warrant before proceeding with an arrest." *Id*.

A warrantless arrest of a person is also permissible when there is reason to believe that evidence will be destroyed. In *United States v. Socey*, the D.C. Circuit held that a warrantless entry into a home was justified because the officers "had an objectively reasonable basis for concluding that the destruction of evidence was imminent." *United States v. Socey*, 846 F.2d 1439, 1446-1447 (D.C. Cir. 1988). The court further reasoned that officers could show a reasonable belief that evidence will be destroyed if they can show "1) a reasonable belief that third persons are inside a private dwelling and 2) a reasonable belief that these third persons are aware of an investigatory stop or arrest of a confederate outside the premises so that they might see a need to destroy evidence." *Id*. at 1445.

There is no evidence that Atticus Hemlock posed an immediate threat to the officers or to Jodie Wildrose. Over the course of their entire interaction, Atticus Hemlock did not once

threaten the officers or indicate in any capacity that he was armed. R. 11, 12, 23. Additionally, when he was arrested, the officers found no weapon on Atticus Hemlock's person. R. 23. Furthermore, the record shows that Jodie Wildrose was scheduled to visit Boerum Village on April 8, 2024. R. 4. Atticus Hemlock was arrested on April 2, 2024. R. 20. He posed no immediate threat to both officers or Jodie Wildrose. Furthermore, the officers were not in "hot pursuit" of Atticus Hemlock. They arrived at his home to talk with him. R. 11, 20, 21. When the officers did decide to arrest Atticus Hemlock, they ordered him to come outside his home. R. 12, 23. The officers were not trying to arrest Atticus Hemlock while he was fleeing his home, and thus were not in "hot pursuit" of Atticus Hemlock. And finally, Herman and Simonson knew that Atticus Hemlock was the only one home. R. 11. Therefore, they should have had no reason to suspect that evidence would be destroyed.

II. The Fourth Amendment Was Violated When a Police Officer Conducted a Warrantless Search of a Closed Container Located in the Shared Residence of Fiona Reiser and Atticus Hemlock Without Making Further Inquiry Into The Ambiguous Ownership of the Container.

The Fourth Amendment was violated when a police officer conducted a warrantless search of a closed container located in the shared residence of Fiona Reiser and Atticus Hemlock. The Fourth Amendment makes unconstitutional unreasonable searches and seizures; a search conducted without a warrant is per se unreasonable, subject to a few "specifically established and well-delineated exceptions," among these being voluntarily given consent free from duress or coercion. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (2012). In a case where two or more persons share common authority over an effect to be searched, police officers must only obtain consent from one who has common authority over the effect. *United States v. Matlock*, 415 U.S. 164, 171-72 (1974). It is not required that a police officer obtain consent from the person against whom the search is being conducted. *Id.* In cases where the police officer is

mistaken in their belief that the consenting party has common authority over the effect to be searched, the search may still be constitutionally valid if the facts available to the officer would "warrant a man of reasonable caution" to believe that the consenting person had common authority over the effect to be searched. *United States v. Waller*, 426 F.3d 838, 846 (6th Cir. 2005); *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990). The government bears the burden of establishing whether the officer's reliance on the consenting party's consent was reasonable and, therefore, whether the consent was effective. *Waller*, 426 F.3d at 845. Whether a consenting party's consent was effective to cover the searched effects depends entirely upon the surrounding circumstances. *Id.* at 846 (*citing Rodriguez*, 497 U.S. at 188).

A. Following The Sixth Circuit's Standard Outlined in *United States v. Taylor*, The Fourth Amendment Was Violated When a Police Officer Failed to Inquire Further Into The Ambiguous Ownership of The Closed Container And Proceeded to Search It.

Following the Sixth Circuit Court of Appeals' test outlined in *United States v. Taylor*, the Fourth Amendment was violated when a police officer failed to inquire into the clearly ambiguous ownership of the closed container within Fiona Reiser and Atticus Hemlock's shared residence and proceeded to search it. According to the Sixth Circuit in *United States v. Waller*, if an officer is faced with an ambiguous situation, where the facts presented to them make it unclear whether the effect to be searched is subject to the kind of mutual use that would grant a consenting person common authority over the effect, then to proceed to search without making further inquiry into the ownership of the effect constitutes an unconstitutional search. *Waller*, 426 F.3d at 846 (*citing Rodriguez* 497 U.S. at 188-89). Importantly, the ambiguity of such a situation is highly fact-dependent. Mere ownership of a residence is not enough to establish that a party has common authority over the entire house or the effects within it and can consent to their search. *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991) (*citing Matlock*, 415

U.S. at 171, n.7). Further, when part of a residence is under the exclusive control and use by one resident, co-occupants of the residence as a whole have no right to consent to the search of that private area from which they themselves are excluded. *United States v. Almeida-Perez*, 549 F.3d 1162, 1172 (8th Cir. 2008).

In *United States v. Taylor*, police officers searched Arnett's home pursuant to her consent, where they found a shoebox in the closet of a spare room surrounded by men's clothing. *United States v. Taylor*, 600 F.3d 678, 679-80 (6th Cir. 2010). Inside the shoebox, the police officers found a handgun and ammunition. *Id.* The shoebox itself belonged to Taylor, and Arnett did not have common authority over it. *Id.* at 681. The court determined that when confronted with a closed container whose ownership is ambiguous, proceeding to search the container without inquiring into the ownership of said container violates the Fourth Amendment and constitutes an unconstitutional search. *Id.* The court specifically rejected the argument that certain containers are afforded a higher degree of privacy and instead held that any closed container, when the circumstances surrounding its ownership are ambiguous, is constitutionally protected. *Id.*

In both *Waller* and *Taylor*, the Sixth Circuit outlined four factors that it considered persuasive in considering whether a closed container should be considered private and therefore subject to protection. These factors are:

> (1) the type of container and whether that type historically commanded a high degree of privacy,
> (2) whether the container's owner took any precautions to protect his privacy,
> (3) whether the resident at the premises initiated the police involvement, and
> (4) whether the consenting party disclaimed ownership of the container.

Waller, 426 F.3d at 848 (*citing United States v. Salinas-Cano*, 959 F.2d 861 (10th Cir. 1992)). Other facts that the court in *Taylor* found relevant in establishing the ambiguity of the closed container that was searched include the fact that the officers searched the container believing that

it belonged to Taylor, not Arnett, and that the items surrounding the closed container made it unclear to a reasonable man to whom the closed container belonged. *Taylor*, 600 F.3d at 682.

The Fourth Amendment was violated when a police officer encountered Atticus Hemlock's closed cardboard box following a statement by Fiona Reiser that made unclear the ownership of the closed container, and proceeded to search it without inquiring further into the ownership of the box. When a police officer searched Fiona Reiser and Atticus Hemlock's residence pursuant to Fiona Reiser's consent on April 2, 2024, the officer asked very few questions. R. 15. However, the officer did ask Fiona Reiser whether she slept upstairs. R. 15. Fiona Reiser, in response to this question, indicated to the officer that she slept in the back bedroom and that the stairs led to a loft that Atticus Hemlock used as an office space and where he stored his personal items. R. 15. When further questioned by the officer, Fiona Reiser indicated that she did not know what was kept upstairs because she did not go up there, and Atticus kept the contents of his storage private from her. R. 15. The officer proceeded to walk directly towards the stairs that Fiona Reiser had just indicated led up to Atticus Hemlock's private loft and open and search a cardboard box on the stairs. R. 16.

Fiona Reiser did not have common authority over the cardboard box and therefore did not have actual authority to consent to its search. R. 56. *See Matlock*, 415 U.S. at 171 n.7. When she indicated to the officer that she did not have access to the upstairs loft, the ownership of the cardboard box became ambiguous. R. 15. The cardboard box was sitting squarely on the stairs leading up to the private loft; the ownership of the box was uncertain to the reasonable man. R. 17. Upon hearing Fiona Reiser's declaration that not only did she not have access to the lofted space, but that she had no idea what was stored in the lofted space, the police officer had the duty to further inquire into the ownership of the box before searching it. *Taylor*, 600 F.3d at 681.

Analysis of the factors laid out in both *Taylor* and *Waller* further supports the conclusion that the police officer violated the Fourth Amendment by refusing to inquire further into the ownership of the closed container. Though a cardboard box is not the type of container that traditionally commands a high degree of privacy, "they are often used to store private items," particularly in the context of being stored in a lofted space that is kept private from co-occupants. Further, by closing the cardboard box, storing it in a private lofted space, and not granting Fiona Reiser permission to look inside the box, Atticus Hemlock took several measures to protect the privacy of his closed container. R. 15-17. Fiona Reiser did not initiate police involvement at all; in fact, she was ambushed by officers on her way home from work. R. 15. As the court stated in *Taylor*, the police officer here did not give Fiona Reiser a chance to disclaim ownership in the closed container because he did not inquire into its ownership when faced with an unclear situation of ownership. R. 15, 16. *See Taylor*, 600 F.3d at 683 (*noting* "the officers here never questioned Arnett about whether she had mutual use or control of the shoebox."). Fiona Reiser further impliedly disclaimed ownership of the box by stating that she did not know what was in the lofted area. R. 15. Further, the police officer likely searched the box because he believed it belonged to Atticus Hemlock, his suspect, and not to Fiona Reiser, whom he did not suspect of a crime. *Taylor*, 600 F.3d at 682.

The Fourth Amendment was violated when a police officer, faced with a situation of ambiguous ownership of the cardboard box within Fiona Reiser and Atticus Hemlock's shared residence, did not inquire further into the ownership of the box and instead proceeded to search it pursuant to Fiona Reiser's consent. Fiona Reiser did not have common authority over the cardboard box, and the situation presented to the officer was ambiguous enough that the government has not met its burden of establishing that Fiona Reiser's consent was effective as to

the contents of the cardboard box. Because the officer did not inquire further into the ownership of the box, he violated the Fourth Amendment, and the fruits of his unconstitutional search should be suppressed.

B. This Court Should Adopt The Sixth Circuit's Standard Because It Is In Line With The Full Protections of The Fourth Amendment.

This Court should recognize the Sixth Circuit's standard for searches of ambiguous closed containers because the Sixth Circuit's standard is in line with the full protections of the Fourth Amendment. The Fourth Amendment protects against "unreasonable searches and seizures" and promises security in one's "persons, houses, papers, and effects." U.S. Const. amend. IV. In order to fully realize this promise, it is paramount that the standard for warrantless search pursuant to consent be narrowly tailored and based on reasonableness. This Court's decision in *Illinois v. Rodriguez*, which established the apparent authority consent doctrine, was based upon the reasonableness of the officer's belief that the consenting party had authority to consent to the search of the effects to be searched. *Rodriguez*, 497 U.S. at 184. The Sixth Circuit's test does little more than ask that an officer of the law act reasonably when presented with an ambiguous situation: when it is unclear whether an effect to be searched belongs to the consenting party, the officer must inquire further into its ownership. *Taylor*, 600 F.3d at 681. The test does not ask anything extraordinary of the searching officer; the test merely asks that the officer use their discretion to determine whether a situation of ownership is unclear to a reasonable man. If the situation is unclear, it only requires that the officer inquire further into the ownership of the effect to be searched.

The Sixth Circuit's standard is grounded in reasonableness analysis. It does not allow for an officer to be willfully blind to the situation in front of them, and does not allow for a party

unauthorized to access a private effect to consent to its search, which is in line with the weight of the case law. *Matlock*, 415 U.S. at 171 n.7; *Rodriguez* 497 U.S. at 188-89; *Almeida-Perez*, 549 F.3d at 1172. Asking for only reasonable caution from law enforcement officers does not overburden police forces or inhibit investigations, and it respects the goals of the Fourth Amendment while maintaining a standard of reasonableness for all persons. The Sixth Circuit's standard is steeped in reasonableness and fully realizes the full protections of the Fourth Amendment.

C. Even If This Court Will Not Recognize The Sixth Circuit's Standard For The Search of a Closed Container Whose Ownership Is Ambiguous, The Second And Seventh Circuits' Standard Outlined in *United States v. Snype* and *United States v. Melgar* Are Not On Point And Should Not Control In This Case.

The decisions by the Second and Seventh circuits in *United States v. Snype* and *United States v. Melgar* are not on point to the facts in Atticus Hemlock's case and their decisions should not control in this case. In *United States v. Snype*, Bean consented to the search of the entire premises both orally and in writing, where police officers discovered and searched both a knapsack and a red plastic bag that belonged to Snype. *United States v. Snype*, 441 F.3d 119, 127 (2nd Cir. 2006). The Second Circuit Court of Appeals stated that consent pursuant to one's common authority over a residence extends to all items within that residence unless the effect to be searched "obviously belong[s] to another person." *Id.* at 136. The court rejected Snype's argument that the officers needed a reasonable basis for concluding that the effects belonged to Bean, and instead stated that the burden of showing that the effect obviously did not belong to Bean was on Snype. *Id.* The court named several nonexhaustive factors that could indicate to a reasonable man that the effect did not belong to the consenting party, among these being an officer seeing Snype carrying the effects or markings on the effects labelling them as belonging to Snype. *Id.*

In *United States v Melgar*, Velasquez consented to the search of a hotel room of which she was a co-occupant. *United States v. Melgar*, 227 F.3d 1038, 1039. Inside the hotel room, police officers found and searched a floral purse which belonged to Melgar, and inside which was incriminating evidence. *Id.* at 1040. The court noted that in this case, there was no "positive information" that the effect did not belong to the consenting party and that the absence of such information grants police the right to search an effect within an area to which they have been given consent to search. *Id.* at 1041. The court considers facts such as exterior markings on the effect, labelling it as not belonging to the consenting party, to be dispositive, but does not make an exhaustive list of what other facts might constitute such "positive information" in the hands of the searching officer. *Id.*

While here, like in *Snype*, no officer saw Atticus Hemlock carrying the box, nor were there any markings on the box indicating that the box belonged to Atticus Hemlock, unlike in *Snype*, the officer searching Fiona Reiser and Atticus Hemlock's shared residence had specific information regarding the ownership of the box. R. 15. Here, Fiona Reiser explicitly told the searching officer that she did not go into the loft and that it was the private domain of Atticus Hemlock. R. 15. This is precisely the type of "positive information" the court discussed in *Melgar* that would warrant a man of reasonable caution to conclude that the box did not belong to Fiona Reiser but instead belonged to Atticus Hemlock. *See Melgar*, 227 F.3d at 1041. The fact that the searching officer had access to such information places this case squarely outside of the standard outlined by the Second and Seventh Circuit and instead warrants a decision that the officer violated the Fourth Amendment when, in the face of positive information that the effect to be searched did not belong to Fiona Reiser, who was providing consent for the search, but

instead was under the exclusive and private control of Atticus Hemlock, the officer proceeded to search the effect regardless.

III. Extrinsic Evidence of Specific Instances of Conduct should be Admitted to Impeach Iris Copperhead's Character of Untruthfulness When She is Unavailable to Testify at Trial Under FRE 806.

Evidence of Iris Copperhead's record of academic dishonesty and falsifying her job application should be admitted to attack Iris Copperhead's credibility, as if she were testifying at trial. Federal Rules of Evidence 608(b) allows a cross-examiner to impeach a witness by asking him about specific instances of past conduct that are not criminal convictions, which are probative of his veracity or "character for truthfulness or untruthfulness". *United States v. Abel*, 469 U.S. 45, 55 (1984). However, the Rule prohibits the cross-examiner from introducing extrinsic evidence of the witness's past conduct and limits the inquiry to cross-examination. *Id*. On the other hand, Rule 806 states, in pertinent part, that when a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. *United States v. Inadi*, 475 U.S. 387, 396 (1986) (quoting Fed.R.Evid. 806).

The intersection of FRE 608(b) and FRE 806 creates significant tension when the hearsay declarant is unavailable for cross-examination at trial. The issue now becomes whether extrinsic evidence of specific instances of conduct can be admitted to impeach an unavailable hearsay declarant's character for untruthfulness. Federal courts are deeply split on this issue.

While Rule 608(b) ordinarily does not permit the introduction of extrinsic evidence of specific instances of conduct for impeachment, extrinsic evidence of specific instances may be admissible through Rule 806, since that rule applies only "when the declarant has not testified and there has by definition been no cross-examination, and resort to extrinsic evidence may be the only means of presenting such evidence to the jury." *United States v. Friedman,* 854 F.2d 535, n.8 (2d Cir. 1988).

A. Extrinsic Evidence to Impeach Iris Copperhead Should be Admitted Because Her Unavailability Creates a Fundamental Evidentiary Imbalance That Rule 806 is Designed to Prevent.

Extrinsic evidence of Iris Copperhead's record of academic dishonesty and falsified job application should be admitted because excluding it would inevitably place Atticus Hemlock at an unfair disadvantage. Rule 608(b) generally bars extrinsic evidence of specific instances of dishonest conduct when offered to prove a witness's character for untruthfulness and limits such inquiries to cross-examination. Fed. R. Evid. 608. However, this rests on an underlying assumption that the witness is available to testify and is subject to adversarial questioning. 608(b) has not considered the scenario when the hearsay declarant is unavailable.

The Supreme Court has recognized a "preference for live testimony" because cross-examination is "the greatest legal engine ever invented for the discovery of truth." *White v. Illinois*, 502 U.S. 346, 356 (1992) (quoting *California v. Green*, 399 U.S. 149, 158, (1970)). When cross-examination is unavailable, Rule 806 addresses this problem squarely by "[permitting] the impeachment of hearsay declarants who do not testify." *United States v. Jackson*, 345 F.3d 59, 69 (2nd Cir. 2003) (holding that when the witness's death prevents him from testifying, the opposing party can use impeachment evidence to attack his credibility with regard to hearsay declarations admitted into evidence). The rationale is that "the declarant of a

hearsay statement which is admitted in evidence is in effect a witness. [The declarant's] credibility should in fairness be subject to impeachment…as though he had in fact testified." *United States v. Delvi*, 275 F. Supp. 2d 412, 418 (S.D.N.Y. 2003) (citing Fed.R.Evid. 806 Advisory Committee Note). Without Rule 806, unavailable declarants would become functionally immune from meaningful impeachment, precisely the imbalance that the Rule is designed to prevent.

Courts applying Rule 806 have therefore allowed impeachment by extrinsic evidence where unavailability eliminates the ordinary cross-examination safeguard. In *United States v. Uvino*, the court allowed the defendants to introduce extrinsic evidence to attack the two unavailable declarants' credibility. The defendant challenged that the two hearsay declarant's (alleged victims') statements recorded on tape, which are admitted as excited utterance under Rule 803 (2), was in part or whole a fabrication. *United States v. Uvino*, 590 F. Supp. 2d 372, 375 (E.D.N.Y. 2008). The declarants invoked the Fifth Amendment and were unavailable to testify in court. *Id*. at 373. The Court held that "evidence of prior dishonest acts of the declarants, including participation in an armed robbery and fabrication of a story to explain the robbery, is admissible so that the jury can weigh it in considering whether the exclamations of [declarants] heard on the tape" were fabricated. *Id*. at 375. Similarly, in *United States v. Delvi*, defendants sought to admit the hearsay declarant's past conviction upon a plea of guilty to criminal possession of a weapon, snorting of heroin before he made the statement to Detective Rosenberg, and inability to identify defendant Garcia from a photo array. *Delvi*, 275 F. Supp. 2d at 417. After admitting a victim's statement as an excited utterance under Rule 803(2), the court held defendants were "entitled to impeach [the declarant]" using these extrinsic evidence under Rule 806, explaining that because the hearsay statement was admissible and the impeachment

evidence "would be admissible if [the declarant] were to testify, defendants may offer the … evidence pursuant to Rule 806." *Id.* at 418.

Some circuits support a more rigid application of Rule 608(b) to bar the introduction of extrinsic evidence on the theory that other impeachment methods remain available even when declarants are unavailable. The Third Circuit Court of Appeals, following *United States v. Saada*, suggests that "the unavailability of the declarant will not always foreclose using prior misconduct as an impeachment tool because the witness testifying to the hearsay statement may be questioned about the declarant's misconduct—without reference to extrinsic evidence thereof—on cross-examination concerning knowledge of the declarant's character for truthfulness or untruthfulness." *United States v. Saada*, 212 F.3d 210, 221 (3rd Cir. 2000). On the other hand, even if a hearsay declarant's credibility may not be impeached with evidence of prior misconduct, the Third Circuit Court contends that other avenues for impeaching the hearsay statement, such as opinion and reputation evidence of character under Rule 608(a), evidence of criminal convictions under Rule 609, and evidence of prior inconsistent statements under Rule 613. *Id*.

These alternatives are too optimistic. In this case, the witness testifying to the hearsay statements, Mr. Kolber, admitted that he had never met Iris Copperhead before April 2, 2024. R. 45. He further contended that he "[had] no reason to double [Iris Copperhead]'s credibility" because he "[does] not know anything about her personal life other than this alleged kidnapping plot [he] read in the news." R. 45-46. As a result, questioning Mr. Kolber on cross-examination about Iris Copperhead's character for truthfulness "without reference to extrinsic evidence," as the *Saada* Court suggested, would be purposeless. Mr. Kolber lacks any knowledge about Iris Copperhead's personality, character, or reputation in the community. *Saada* Court's first

alternative approach assumes that the testifying witness has personal familiarity with the hearsay declarant. That assumption is absent here, and will be absent in many other cases.

Furthermore, although it is true that other avenues are available, they are not available in a meaningful way. Rule 608(a) requires a witness who can provide admissible opinion or reputation testimony. Yet, nothing in this record suggests any available witness with sufficient personal knowledge with Iris Copperhead's reputation for truthfulness. Likewise, Rule 609 is inapplicable because it depends on a past criminal conviction, which the Government does not claim exists. Rule 613 requires a prior inconsistent statement—again, the record shows no accessible inconsistent statement that meaningfully contradicts the hearsay statements at issue. While these "avenues" exist in the abstract, they are not available as a practical matter on these facts. Importantly, the purpose of laying out other impeachment methods was not to *substitute* Rule 608(b) when the declarant is unavailable to be cross-examined; rather, it is to prevent unfairness when meaningful credibility testing remains possible through other mechanisms.

Here, it does not. The petitioner must bear an unreasonable burden to explore those "other avenues" when they already possess powerful impeachment evidence and witnesses relating to that evidence, simply because the declarant is unavailable to testify. The Government's position, therefore, converts Rule 806 into a formal entitlement without a functional remedy. Without the ability to introduce extrinsic evidence, Rule 806 protection "would be hollow" and "serves little purpose" to ensure that defendants, like Atticus Hemlock, are not forced "to simply accept damaging hearsay testimony without any way to undermine or test the credibility of its source." R. 49-50. Excluding the only concrete evidence would force the jury to accept a powerful and blame-shifting accusation, and simultaneously deprive Atticus

Hemlock of any realistic way to expose Iris Copperhead's unreliability and her history of fabricating and misrepresenting facts.

Therefore, this court should adopt a less rigid application of Rule 608(b) to avoid evidentiary imbalance.

B. Regardless of the Fairness Concern, the Court Should Admit the Impeachment Evidence Because Its Probative Value Is Extraordinary and Rule 403 Adequately Addresses the Rule 608(b) Policy Concerns.

This Court should admit the impeachment evidence against Iris Copperhead because its probative value is high and Rule 403 adequately addresses the Rule 608(b) concerns. The purpose of Rule 608(b)'s "prohibition of extrinsic evidence is to avoid holding mini-trials on irrelevant or collateral matters." *United States v. Beauchamp*, 986 F.2d 1, n.1 (1st Cir. 1993). The majority circuits support a ban on extrinsic evidence for this very reason: they value the "practical interests of judicial efficiency by avoiding the collateral issues that would arise if parties were permitted to litigate the truth of every insurance of alleged prior misconduct by a non-testifying declarant." R. 58.

These underlying policy concerns are already properly addressed because Rule 806 does not circumvent the Rule 403 balancing test. Evidence that could have come in under Rule 806 can still be excluded when it has no probative value and might confuse the jury. *Friedman*, 854 F.2d at 569. *See* Fed.R.Evid. 403 (relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."). Rule 806 generally authorizes impeachment of a hearsay declarant using the same types of evidence that would be admissible if the declarant testified. *Id*. at 570. Nevertheless, its admissibility still turns on whether the proffered conduct actually "cast[s] doubt on the declarant's credibility". *Id*. This assessment must be determined by comparing the relationship

between the past conduct and the hearsay statement, and the trial court has broad discretion in making that determination. *Id*.

In *United States v. Friedman*, the defense sought to introduce extrinsic evidence to impeach the credibility of a hearsay declarant, Donald Manes, who had committed suicide before the trial. *Id*. at 569. Specifically, they sought to show that Manes had lied about an attempted suicide, claiming it was an abduction, to impeach his credibility regarding statements admitted as co-conspirator declarations. *Id*. The Court excluded the extrinsic evidence because the false abduction story "was simply not probative on the issue" and "had no conceivable bearing upon the credibility of [Manes's] statements to [the testifying witness] in furtherance of the conspiracy." *Id*. at 569-70. The court suggested that extrinsic evidence of such misconduct would have been admissible had the misconduct been probative of truthfulness. Similarly, the *Uvino* Court followed the rationale set forth by the *Friedman* Court, but instead admitted the extrinsic evidence of the declarants' prior dishonest acts of lying about armed robbery because it "cast doubt" on credibility in a way that mattered for the particular hearsay statements the jury heard from the tape. *Uvino*, 590 F. Supp. 2d at 375.

Here, the evidence the petitioner sought to introduce had high probative value. On the one hand, the hearsay statements made by Iris Copperhead were at the heart of Atticus Hemlock's conviction. Her statements, "I can't believe I saw him get arrested. It's all his fault. It was all Atticus' idea—NOT MINE! I can't run a business prison!", were both self-serving and incriminating. The Court must put more effort into evaluating the truthfulness of hearsay statements and the reliability of the declarant. On the other hand, the two pieces of evidence wished to be introduced are highly probative because it reflects Iris Copperhead's concrete dishonest acts for personal advantage. Iris Copperhead "failed her Business Entrepreneurship

Capstone course due to academic integrity violations," where she "used artificial intelligence to complete the assignment" and "earned a failing grade." R. 9. Furthermore, like the hearsay declarant in *Uvino*, she also lied on a job application in which she "misrepresent[ed] that she obtained a Bachelor's Degree in Business Entrepreneurship from University of Boerum … and that she would graduate in May 2024," when she "never graduated due to a failing grade in Spring 2023." R. 48. Unlike the evidence presented in *Friedman*, these specific instances of dishonest conduct have "conceivable bearing upon the credibility" of Iris Copperhead. They go to the heart of whether she lies when the stakes are high, exactly the question the jury must answer when deciding whether to credit her out-of-court statement incriminating Atticus Hemlock.

Accordingly, the Court should hold that Rule 806 permits Atticus Hemlock to introduce extrinsic evidence of Iris Copperhead's dishonest conduct. Since Iris Copperhead is unavailable at trial, excluding this evidence would leave her blame-shifting hearsay accusation essentially untested. Additionally, Rule 403 can manage any mini-trial concerns without insulating her credibility from meaningful impeachment.

CONCLUSION

For the foregoing reasons, Petitioner Atticus Hemlock respectfully requests that this Court reverse the judgment of the Court of Appeals.