Team 19 P

Appeal No.: 24 – 1833

In the
Supreme Court of The United States

Atticus Hemlock,

Petitioner/Appellant,

v.

United States of America,

Respondent/Appellee.

On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit from its Judgment dated April 14, 2025, affirming the Judgment of the United States District Court for the Northern District of Boerum.

BRIEF FOR PETITIONER ATTICUS HEMLOCK

Counsel for Petitioner/Appellant
Dated: February 8, 2026

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 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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CONSTITUTIONAL PROVISIONS

The text of the relevant constitutional provisions 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 CASE

Petitioner, Atticus Hemlock, lives in a small cabin set deep within a wooded area in Boerum Village with his girlfriend, Fiona Reiser. R.13–15. On the evening of April 2, 2024, Mr. Hemlock was inside his home when two individuals encroached on his secluded property unannounced in an unmarked vehicle. R.21 at (9–13). FBI Special Agents Hugo Herman and Ava Simonson approached the cabin and loudly knocked on the door several times, identifying themselves as federal agents who were conducting an investigation. R.11. Both Agents were wearing large duty belts, each exposing a gun, taser, flashlight, baton, and handcuffs. R.25 at (10–20). Standing mere feet outside of the doorframe, Agent Simonson pressed Mr. Hemlock to leave his home to speak with them regarding an investigation. *Id*. Mr. Hemlock declined and expressed several times he wanted to remain in his home and end the encounter. *Id*.

Against Mr. Hemlock's expressions, the Agents persisted with their line of questioning, refusing to answer inquiries regarding the purpose of their investigation. *Id*. Agent Herman drew closer to the porch of the cabin to gain a view inside the home, which allowed him to see two bottles of chloroform. R.11. When the Agent inquired about the bottles, Mr. Hemlock responded, "Don't worry about those." R.11 He then shifted his position, partially blocking the agents' view of the interior of his home. *Id*. During this exchange, Mr. Hemlock asked whether the agents' visit had anything to do with "Jodie" and stated he did not wish to discuss her further. *Id*.

Agents Herman and Simonson withdrew to their vehicle to confer. R.14. Based on their encounter, they believed to have probable cause to arrest Mr. Hemlock. R.22 at (16–23). The Agents did not have an arrest warrant and did not attempt to retrieve one at any time. *Id*. The Agents conspired the need to "get him to come outside." R.12. At this time, Special Agent Kiernan Ristroph was contacted for backup. R.23 at (3–4); R.12. Agents acknowledged Mr. Hemlock "clearly [did] not want to talk" and appeared "pissed." R.12 Disregarding these observations, the

Agents again confronted Mr. Hemlock at his door, this time, their hands visibly positioned on their handguns. *Id*. Both Agents shouted at Mr. Hemlock to exit his home. *Id*. These commands included "[g]et outside right now" and "[c]ome outside." *Id*. Overcome by the agents' conduct, Mr. Hemlock hesitated before unwillingly leaving his home resulting in his arrest. *Id.*

After being restrained with handcuffs, Agent Herman seized a spiral–bound notebook from Mr. Hemlock's person, which was open to pages describing plans attributed to Mr. Hemlock and Iris Copperhead. R.23 at (17–20). Iris Copperhead was believed to be Mr. Hemlock's co-conspirator. R.7. At this point, Agent Ristroph was on Mr. Hemlock's property and remained at the cabin to await Reiser's return. R.13.

Upon her arrival, Agent Ristroph identified himself as an FBI agent, informed her of Mr. Hemlock's arrest, and stated he was conducting an investigation. R.13. Agent Ristroph asked to look around the cabin, and Reiser allowed him inside. *Id*. While inside the living area, Agent Ristroph noticed a staircase and asked whether Reiser slept upstairs. Reiser responded "[N]... no, we sleep in the back," and further explained Mr. Hemlock used the loft for storage and office space." R.15. Agent Ristroph asked what was kept in the loft and Reiser explained she was not aware as she did not use the loft. *Id.* Agent Ristroph made no other inquiries concerning the loft. *Id.* Immediately following the brief inquiry, Agent Ristroph walked directly to the stairs leading to Mr. Hemlock's loft, where he discovered a closed, unmarked cardboard box which he opened, finding materials he felt were dispositive to kidnapping. *Id.* Permission was not requested or received to open the closed container at any time. *Id*. Agent Ristroph took photographs of the residence and materials before removing the cardboard box from the home. *Id.*

Based on the above–mentioned facts, the Government charged Mr. Hemlock with Attempted Kidnapping of an Officer of the United States Government. Prior to trial, Mr. Hemlock

motioned to suppress evidence on Fourth Amendment grounds. R.18. He moved to suppress the notebook seized from his person, arguing it was the fruit of an unconstitutional arrest under *Payton v. New York*, because law enforcement officers, while remaining outside his home, coerced him to exit and effectuated a warrantless arrest. R.18. Mr. Hemlock also moved to suppress evidence seized from a closed cardboard box located inside the cabin, asserting that Reiser lacked actual or apparent authority to consent to a search of that container. R.19 at (7–10).

The District Court denied both suppression motions, finding that the arrest was constitutionally permissible, and that the search of the cardboard box was valid based on third–party consent. R.35 at (15–18).

On August 5, 2024, Mr. Hemlock proceeded to a jury trial in the United States District Court for the Northern District of Boerum. R.53 The Government introduced an out–of–court statement made by Copperhead through the testimony of Theodore Kolber. Copperhead was unavailable for cross–examination, having died the night of her arrest. R.46 at (14–19). Kolber testified that on the day of Mr. Hemlock's arrest he encountered a woman in Joralemon State Park. R.41 at (16). Kolber later identified this woman as Iris Copperhead after seeing a news article. R.45 at (2–4). Copperhead appeared visibly distressed and shaken. R.42 at (20–24). During their disturbing exchange, in a frantic and emotional manner, Copperhead stated, "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 at (15–18).

Over the defense's objection, the District Court admitted these statements under the excited utterance exception stated in Federal Rule of Evidence 803(2). R.44 at (3–5). After the Government rested, Mr. Hemlock sought to impeach Copperhead's credibility pursuant to Federal Rule of Evidence 806 by offering extrinsic evidence of prior dishonest conduct. R.48 at (8–15).

The District Court excluded the proffered evidence, ruling that Federal Rule of Evidence 608(b) barred its admission. R.50 at (12–13).

The jury found Mr. Hemlock guilty of Attempted Kidnapping of an Officer of the United States Government. R.53. The District Court sentenced Mr. Hemlock to ten years' imprisonment. R.53. Mr. Hemlock appealed to the United States Court of Appeals for the Fourteenth Circuit. R.51.

On appeal in the Fourteenth Circuit, he challenged: (1) the constitutionality of his warrantless arrest under the Fourth Amendment; (2) the admission of evidence seized from the closed cardboard box based on third–party consent; and (3) the exclusion of extrinsic impeachment evidence concerning an unavailable hearsay declarant under Federal Rules of Evidence 806 and 608(b). R.53.

The court held that Mr. Hemlock's warrantless arrest did not violate the Fourth Amendment, and therefore the notebook seized from Mr. Hemlock's person was properly admitted at trial. R.54–55. Relying on *United States v. Watson*, the court reaffirmed that officers may arrest a felony suspect without a warrant in public based on probable cause, while *Payton v. New York* prohibits only warrantless arrests inside the home, drawing a "firm line" at the threshold. *Id.* The court reasoned that because the agents never crossed into the Mr. Hemlock's cabin and arrested him only after he stepped outside, the court found no *Payton* violation. *Id.* Addressing the circuit split, the court declined to adopt the "constructive entry" doctrine recognized in cases such as *United States v. Morgan*, instead aligning with circuits that read *Payton* literally and require a physical entry into the home. *Id.* The court further reasoned that, even if a constructive entry theory were viable, it would not apply here because the agents did not coerce the Mr. Hemlock to exit. *Id.* Adopting a bright-line rule to avoid the "conceptually muddled" and impractical standards

criticized in *United States v. Allen*, the Fourteenth Circuit held that no Fourth Amendment violation occurred and affirmed the conviction. *Id.*

The Fourteenth Circuit also rejected Mr. Hemlock's challenge to the search of the cardboard box, holding that the search was valid under the apparent authority doctrine and that the evidence was properly admitted. R.56—57. The court reasoned although warrantless home searches are generally prohibited, they are permissible when conducted pursuant to voluntary consent, including from a third party with actual or apparent authority. *Id.* The court emphasized that the relevant question is whether officers reasonably believed Reiser had authority over the box, judged by an objective standard. *Id.* Declining to impose a duty on officers to resolve every ambiguity about ownership, the court aligned with the Second and Seventh Circuits in holding that police may rely on a co-occupant's consent to search containers in common areas unless they have clear reason to believe the item exclusively belongs to someone else. *Id.*

Finally, the court rejected Mr. Hemlock's challenge to the exclusion of extrinsic impeachment evidence concerning the unavailable hearsay declarant, Iris Copperhead. R.57–58. Although the court acknowledged that Copperhead's statement was admitted for its truth and was a significant component of the Government's case, it held that Federal Rule of Evidence 806 does not expand the scope of impeachment beyond the limits imposed by Rule 608(b). *Id*. Relying on *United States v. Saada*, the court concluded that Rule 608(b)'s prohibition on extrinsic evidence of specific instances of conduct applies even when the declarant is unavailable. *Id*.

The court reasoned that because extrinsic evidence of Copperhead's prior misconduct would have been inadmissible had she been available to testify, her absence did not permit its admission under Rule 806. *Id*. The court declined to follow the Second Circuit's contrary approach in *United States v. Friedman*, emphasizing that Rule 806 cannot be used to circumvent Rule

608(b)'s explicit limitation. *Id*. The court further relied on Rule 806's silence regarding extrinsic evidence, contrasted with Rule 613's express authorization, and cited concerns of judicial efficiency and avoidance of collateral mini–trials. *Id*. On that basis, the court held that the district court did not err in excluding the proffered impeachment evidence and affirmed the conviction.

SUMMARY OF THE ARGUMENT

This appeal presents three legal errors. First, the Fourteenth Circuit improperly narrowed the Fourth Amendment's protection of the home by holding that *Payton v. New York* is violated only when law enforcement physically crosses the threshold of a residence. Second, the court misapplied third-party consent doctrine by upholding a warrantless search of a closed container despite clear limitations on the consenting party's authority. Third, the court resolved the interaction between Federal Rules of Evidence 806 and 608(b) mechanically, in a manner that nullified Rule 806's operative function and foreclosed meaningful impeachment of an unavailable hearsay declarant.

The Fourth Amendment concludes warrantless searches and seizures within the home are presumptively unreasonable absent exigent circumstances or consent. A seizure may occur through a show of authority, not solely through physical force. When law enforcement conduct would cause a reasonable person to believe they are not free to terminate an encounter, and submission follows, a seizure has occurred. *Payton*'s protection is not limited to cases of physical entry, and its core principle cannot be evaded by coercing a resident to exit the home and then effecting an arrest "outside." The proper inquiry focuses on the location of the right holder at the moment of seizure, not the physical location of officers. By adopting a bright-line rule requiring physical entry, the Fourteenth Circuit permitted the Government to circumvent the Fourth Amendment's greatest protection– the home.

The Fourteenth Circuit also erred in affirming the warrantless search of a closed container based on third-party consent. Third party consent to search extends only to areas and effects over which the consenting party has common authority, defined by joint access or control. Apparent authority exists only where officers reasonably believe such authority exists. When circumstances create ambiguity regarding ownership or control, the reasonableness principle in the Fourth

Amendment requires officers to resolve that ambiguity before proceeding. Upholding a search of a closed container without inquiry, despite indicators that it belonged exclusively to another, expands third-party consent beyond constitutional limits and undermines the requirement that warrantless searches be narrowly confined to recognized exceptions.

Finally, the Fourteenth Circuit misconstrued the Federal Rules of Evidence by applying Rule 608(b) as an absolute bar on extrinsic impeachment in the unavailable declarant context. Rule 806 was enacted to ensure that once hearsay is admitted for its truth, the declarant's credibility may be meaningfully attacked, notwithstanding the declarant's absence from trial. By contrast, Rule 608(b) regulates live cross-examination, and serves as a trial-management rule designed to prevent collateral disputes. Reading Rule 608(b) to foreclose all impeachment mechanisms when a declarant is unavailable nullifies Rule 806 and produces the absurd result of insulating hearsay from credibility testing. Proper interpretation harmonizes the Rules by recognizing their distinct domains and preserving judicial safeguards through Rules 403 and 611.

Because the Fourteenth Circuit resolved each issue by adopting rigid, formalistic rules rather than applying settled constitutional principles and interpretive canons, its judgment rests on legal error and warrants reversal.

ARGUMENT

I. The Fourth Amendment prohibits unreasonable searches and seizures.

The Fourth Amendment to the United States Constitution enshrines 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. "[E]ntry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 589–90 (1980). At the core of the Fourth Amendment "stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Id.* at 585. In all cases involving this Amendment, "the ultimate touchstone of the Fourth Amendment is reasonableness." *Lange v. California*, 594 U.S. 295, 301 (2021). "[S]earches and seizures inside a home without a warrant are presumptively unreasonable[.]" *Payton*, 445 U.S. at 586–87. Absent exigency or consent, "that threshold may not be reasonably crossed[.]" *Id.*

A. The Government violated the mandates of *Payton* when it unreasonably seized Hemlock in his home.

A Fourth Amendment seizure occurs by either physical force or show of authority. *California v. Hodari D.*, 499 U.S. 621, 625 (citing *Terry v. Ohio*, 392 U.S. 1, 19 n. 16). When police approach a citizen, that citizen is seized "when a reasonable person would believe that he or she is not 'free to leave.'" *Florida v. Bostick*, 501 U.S. 429, 435 (1991).

Circumstances suggesting a seizure by coercion can 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." *United States v. Mendenhall*, 446 U.S. 544, 554–55 (1980). This principle remains even if the person did not try to end the encounter. *Id*. Notably, a coercion determination

will not turn on the presence or absence "of a single controlling criterion," each case requires careful scrutiny of all the surrounding circumstances. *Schneckloth*, 412 U.S. at 226.

Furthermore, physical force need not be applied to constitute a seizure. "There is torture of mind as well as body; the will is as much affected by fear as by force. And there comes a point where this Court should not be ignorant as judges of what we know as men.'" *Culombe v. Connecticut*, 367 U.S. 568, 605–06 (1961). If the result of the police conduct is not "the product of an essentially free and unconstrained choice by its maker…his will has been overborne and his capacity for self–determination [is] critically impaired." *Schneckloth*, 412 U.S. at 225–26. Police conduct constitutes a seizure under the Fourth Amendment when "the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded[.]" *I.N.S. v. Delgado*, 466 U.S. 210, 216 (1984).

Warrantless seizures inside the home, either by force or show of authority, are presumptively unreasonable. *Payton*, 445 U.S. at 586. The appeal involved a consolidation of two convictions, both involving police officers who physically entered the appellants' premises to make a warrantless arrest. The Supreme Court of the United States overturned the convictions, holding "[i]n terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* at 590. True it is that *Payton* is a case that involves seizure by physical force inside the home, but prohibition of warrantless seizures inside the home nonetheless applies to all seizures, including by show of authority.

The firm line, which *Payton* draws at the entry of the home, "can be breached by conduct other than physical entry." *United States v. Reeves*, 524 F.3d 1161, 1165 (10th Cir. 2008). Law enforcement officers "need not physically enter the home for *Payton* to apply." *Id*. Paramount to

these situations is the location of the person considered to be seized, not the arresting officers, when determining whether an arrest occurs inside a home. *United States v. Allen*, 813 F.3d 76, 78 (2d Cir. 2016).

The location of the police is not dispositive. A circuit split exists on the doctrine of constructive entry, applicable only to seizures by show of authority. Constructive entry is a theory which says a warrantless arrest may be effectuated where police conduct is so coercive, it is as if police entered the home and physically apprehended a citizen. *See United States v. Morgan*, 743 F.2d 1158, 1166–67 (6th Cir. 1984). The analysis focuses on the location of the police during the coercive encounter, rather than the citizen. *Id*. Conversely, the analysis must focus on whether the citizen was inside the home when the warrantless arrest was effectuated. *Allen*, 813 F.3d at 78. Courts, such as the one in *Knight v. Jacobson*, read *Payton* too narrowly when concluding "there is no *Payton* violation unless police physically cross the threshold and enter the home." *Id.* at 81, (citing *Knight v. Jacobson*, 300 F.3d 1272 (11th Cir. 2002). The Court in *Allen* further affirms their decision as binding based on previous precedent because they "must" as is required by Fourth Amendment principles. *Id.* at 86.

Here, the Special Agents effectuated a warrantless arrest of Hemlock inside of his home, in violation of his Fourth Amendment rights and *Payton*. R.11 Although the Agents did not physically cross the threshold of Hemlock's home, their threats most certainly did. This is a *Payton* violation. The focus of the analysis must be where Mr. Hemlock was located when he was seized by a show of authority, not law enforcement. In view of all the circumstances surrounding the encounter, a reasonable person would not have believed they were free to end the encounter because their conduct was so coercive as to overbear Mr. Hemlock's ability to terminate the

encounter. The Agents' commands unconstitutionally coerced Mr. Hemlock to leave the sanctity of his home.

The constructive entry doctrine shifts the focus of the relevant question at bar. This court need not consider the constructive entry doctrine to reach this determination. Constructive entry is an unnecessary phrasing of the issue which results in confusion between the courts. The critical inquiry under *Payton, Reeves,* and *Allen* is the location of the Fourth Amendment right holder at the moment of seizure — not the officers. *Knight* grossly misapplies the rule in *Payton*. In *Knight*, it was held "*Payton* keeps the officer's body outside the threshold, not his voice. It does not prevent a law enforcement officer from telling a suspect to step outside his home and then arresting him without a warrant." 300 F.3d, at 1277. It is true the Fourth Amendment is not implicated when officers approach a doorway to engage in conversation until the encounter is terminated by the citizen. *Gaddis v. DeMattei*, 30 F.4th 625, 631 (7th Cir. 2022). However, the Amendment *is* implicated when police circumvent the well–established warrant requirement through coercive police conduct which overbears an otherwise free citizen's right to end the conversation.

Mr. Hemlock was standing behind his closed screen door inside the cabin when agents exerted coercive authority that left him with no realistic choice but to submit. R.11. His later movement outside was the product of that unlawful show of authority, making the arrest the functional equivalent of an in–home arrest without a warrant. Similarly to *Morgan*, Mr. Hemlock did not "'voluntarily expos[e] himself to a warrantless arrest' by appearing at the door.'" 742 F.2d at 1166. On the contrary, Mr. Hemlock "appeared at the door only because of the coercive police behavior taking place outside of the house." *Id.* Allowing officers to station themselves outside a home, compel a resident to exit through intimidation, and then claim the arrest occurred "outside" would eviscerate *Payton's* protections and reduce the home's constitutional sanctity to a

technicality. "A contrary rule would undermine the constitutional precepts emphasized in *Payton*." *Id*. Vitally, the Supreme Court has afforded the Fourth Amendment greater protections than the Circuit courts in this issue. In *Allen*, the Supreme Court has:

> refused to lock the Fourth Amendment into instances of actual physical trespass.' The principles reflected in the Fourth Amendment 'reached farther than the concrete form' of specific cases that gave it birth, and 'apply to all invasions on the part of the government and its employ[ees] of the sanctity of a man's home and the privacies of life.

813 F.3d at 82.

This Honorable Court should continue this trend in the extension of Fourth Amendment rights to reach farther than mere physical trespass.

The Special Agents' conduct was so coercive that it overbore Mr. Hemlock's ability to terminate the encounter by any reasonable person standard. When evaluating their conduct under a totality of the circumstances analysis, their behavior was undoubtedly coercive under a *Mendenhall* analysis. Here, there was a threatening presence of two federal agents positioned just feet from his doorway, both who were displaying exposed firearms, tasers, batons, and handcuffs. R.12. Additionally, both officers repeatedly ordered Mr. Hemlock to come outside while refusing to explain the purpose of their presence. R.11–12. When the Special Agents re–approached the cabin, both agents placed their hands on their holsters, an unmistakable signal of readiness to use force. R.12. A reasonable person, who is outnumbered by two–armed officers, obstructing the only exit of a secluded cabin, commanding compliance, would not have felt free to ignore their presence and close the door. Under *Mendenhall*, this display of authority, combined with the agents' tone and repeated demands, demonstrates coercion sufficient to affect an unreasonable Fourth Amendment seizure. Mr. Hemlock's eventual decision to open the screen door and step outside was submission to that authority, not a voluntary encounter. R.12. When a citizen opens the door

to their home, "it is not voluntary if ordered to do so under color of authority. *Reeves*, 524 F.3d at 1166.

The surrounding circumstances amplify the coercive nature of the encounter. Mr. Hemlock's cabin was located in a wooded, isolated area, far from neighbors, leaving him effectively alone with two federal agents blocking his only path of exit. R.13–15. The Agents initiated contact by loudly knocking, identifying themselves as FBI, and persisting even after Mr. Hemlock explicitly refused to come outside and stated he felt uneasy. R.11. Rather than disengage, the agents withdrew briefly, coordinated backup, and returned with renewed, forceful commands: "Come outside. Our investigation is important and we need answers. Now!" R.11–12. Such escalating directives, delivered by armed Agents, conveyed that compliance was not optional. Even without drawn weapons, the officers' posture, positioning, and language communicated compulsion, satisfying *Delgado* and *Schneckloth's* totality of the circumstances test for when a person's will is overborne.

It is not necessary for officers to use flashlights, bullhorns, spotlights, and drawn weapons to establish coercion. *Schneckloth*, 412 U.S. at 226. These are factors, not necessary elements. *Id*. It is sufficient to prove coercion under lesser circumstances. Coercion was present when four officers knocked on the defendants' motel door three times, identified themselves as officers, and demanded the defendant to open the door with loud voices. *See United States v. Conner*, 127 F.3d 663 (8th Cir. 1997). These are similar circumstances to the case at bar.

Accepting the Fourteenth Circuit's view of the record as true, the Court need not consider whether this seizure was in public. Mr. Hemlock was not publicly arrested– he was seized in his home. This case is unlike *United States v. Santana*, holding the defendant, who was on her front porch, "was not in an area where she had any expectation of privacy" and she was "exposed to

public view, speech, hearing, and touch as if she had been standing completely outside her house." 427 U.S. 38, 42 (1976). This case is wholly distinguishable from the present issue. In *Santana*, police orchestrated a controlled buy of heroin, and the defendant was already outside the bounds of her home. *Id*. at 40. Furthermore, exigent circumstances justified the physical entry into the home to effectuate the arrest of the defendant. *Id*. at 43.

For the reasons set forth above, this Honorable Court should overturn the Fourteenth Circuit's ruling and find this encounter constituted an unreasonable seizure under the Fourth Amendment. The special agent's coercive conduct under the totality of the circumstances yielded an unreasonable seizure in violation of the Fourth Amendment and *Payton* principles.

B. The Government conducted an unreasonable search when they opened a closed container without consent.

Government conduct constitutes a search either by a physical intrusion of one's property interest or when a person's reasonable expectation of privacy, by both an objective and subjective standard, has been interfered with. *Florida v. Jardines*, 569 U.S. 1, 11 (2013). A search "conducted without a warrant issued upon probable cause is 'per se unreasonable…subject only to a few specifically established and well–delineated exceptions.'" *Schneckloth*, 412 U.S. at 219; *Payton*, at 586–87. One exception is consent to a warrantless government search. *Davis v. United States*, 328 U.S. 582, 593–594 (1946).

A third party may not provide consent to search property or effects of another unless they possess common authority over that property or effect. *United States v. Matlock*, 415 U.S. 164, 169–170 (1974). The scope of this consent to search is limited to areas and effects to which the third party has joint access and/or control over. *Id.* A third party may have actual authority or apparent authority to consent to a search of a container. At issue here is whether Reiser had proper apparent authority to provide consent to search Mr. Hemlock's cardboard box. Apparent authority

to consent to a search of a container exists "if the government proves that the officers who conducted [the search] reasonably believed that the person from whom they obtained consent had the actual authority to grant that consent. *Id.* at 1106. A third party lacks apparent authority to consent to a search "if there is ambiguity as to the asserted authority and the searching officers do not take steps to resolve the ambiguity." *United States v. Purcell*, 526 F.3d 953, 963 (6th Cir. 2008). "Apparent authority does not exist where it is uncertain that the property is in fact subject to mutual use." *United States v. Peyton*, 745 F.3d 546, 554 (D.C. Cir. 2014). Although a third party's apparent authority to "consent to search of a common area extends to most objects in plain view, it does not automatically extend to the interiors of every enclosed space within the area.'" *Peyton*, 745 F.3d at 553.

If a third party does not have actual authority to consent to a search of a property or effect, a search is valid if officers reasonably believed they had such authority. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990). However, to satisfy the reasonable requirement in conjunction with the Fourth Amendment, an officer's belief concerning authority must always be reasonable. *Id*. at 185. This requires officers, when faced with ambiguity in regard to ownership, to further investigate to ensure their determination complies with the Fourth Amendment's reasonableness standard. *Id*.

There is a circuit split as to whether law enforcement officers have a duty to inquire about a resident's authority to consent to searches of ambiguous containers in common areas. The approach required by Fourth Amendment principles is the ambiguity approach, utilized by the D.C. and Sixth Circuits. This approach says law enforcement officers have an affirmative duty to ask clarifying questions if ownership over a container is ambiguous. *Id.* at 546. This approach limits the scope of a third party's open–ended consent to include only those items and areas that do not raise any questions of ownership in the minds of a reasonable officer. *Id.* at 553–54. The Sixth

Circuit justifies the ambiguity approach in *Purcell*, stating the "government cannot establish that its agents reasonably relied upon a third party's apparent authority if agents, faced with an ambiguous situation, nevertheless proceed without making further inquiry." *Purcell*, 526 F.3d at 963. When a third party's consent to search is clouded with ambiguity, a police officer's failure to cure the factual ambiguity is fatal to apparent consent. See *United States v. Taylor*, 600 F.3d 678 (6th Cir. 2010).

The obviousness approach, implemented by the Second and Seventh Circuits, allows officers to search any containers that do not obviously belong to someone other than the consenting party. In *United States v. Snype*, the Second Circuit held that the burden was on the defendant to prove items searched, as the result of third–party consent, were "obviously and exclusively his." 441 F.3d 119, 136 (2d Cir. 2006). In *Melgar v. United States*, the Seventh Circuit stated "when police ha[ve] no reason to know" a closed container does not belong to someone other than the consenting party, it is within the authority of the consent to search that container. 227 F.3d 1038, 1041–42 (7th Cir. 2000). Therefore, under the obviousness approach, the Second and Seventh Circuits extend a co–tenant's open–ended consent to closed containers in a common area, except those that do not obviously belong to that co–tenant. Furthermore, these circuits hold absent an officer's positive knowledge that a container belongs to another, or some other clear manifestation of privacy, officers can rely on someone's open–ended consent to search any container in a common area. See *Snype*, 441 F.3d 119 (2d Cir. 2006); *Melgar*, 227 F.3d at 1041. This Court need not resolve this circuit split because Mr. Hemlock prevails under either approach, thus requiring this Honorable Court to overturn the 14th Circuit's holding.

Here, Reiser provided effective consent to permit Agent Ristroph into her home to search, but the Agent exceeded this scope of consent by searching an ambiguous, closed container. Reiser's

consent to search extended only to areas and effects which she had joint access and/or control over. *Matlock*, 415 U.S. 169–70. Reiser explicitly stated to Agent Ristroph that the loft, and the stairs leading to it, were in the exclusive control of Mr. Hemlock for an office and storage space. R.15. Furthermore, Reiser stated she rarely went into the loft, and she was unaware of what Mr. Hemlock stored there. *Id*. This information signaled that the loft area — including items on the stairs for storage — were within Mr. Hemlock's exclusive domain. The cardboard box was located on the stairway immediately leading to that private loft space, not in a common, shared location like the kitchen table or living room couch. R.15. By her own statements, Reiser disclaimed familiarity and control over Mr. Hemlock's stored belongings, placing the box outside the scope of her common authority. *Matlock*, 415 U.S. at 169–170. Reiser did not have apparent authority because it was certain the cardboard box was not "subject to mutual use." *Peyton*, 745 F.3d at 554. Reiser's limited consent did not extend to "interiors of every enclosed space" within the cabin. *Id*. at 553.

Agent Ristroph's conduct cannot be considered reasonable given the fact that he was confronted with multiple indicators of ambiguity as to authority over the container. *Illinois v. Rodriguez*, 497 U.S. at 186. Agent Ristroph briefly inquired about the loft, and Reiser provided she did not use the loft and she slept in the "back" of the cabin with Mr. Hemlock. R.13; R.15. Without any further investigation, Agent Ristroph directed his attention to a cardboard box on the stairs. R.15. Agent Ristroph's "superficial and cursory questioning…did not disclose sufficient information to support a reasonable belief that she had authority to permit this search." *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991). Furthermore, the Government is unable to prove Agent Ristroph reasonably believed Reiser had actual authority to grant consent to search the box, so therefore, there was no apparent authority to reasonably rely on. *Illinois v. Rodriguez*, 497 U.S. at 186. A closed container inside one's home is the quintessential repository of private

effects. By opening the closed box and looking inside, Agent Ristroph exceeded mere observation of a common area permitted by the general consent to search the cabin.

It is not dispositive that Reiser shared the home with Mr. Hemlock. Apparent authority may not be implied "from the mere property interest a third party has in the property." *Id*. Additionally, Mr. Hemlock's absence in the home does not negate his expectation of privacy in the box, "notwithstanding some appearance or claim of authority by the third person." *United States v. Block*, 590 F.2d 535, 540 (4th Cir. 1978). Even "more certainly, when the retained expectation of privacy is manifest in the circumstances and the third person actually disclaims any right of access." *Id*. Mr. Hemlock did not forfeit his expectation of privacy merely because the cardboard box was in a home he shared with Reiser, a place that is not controlled exclusively by himself. *United States v. Fultz*, 146 F.3d 1102, 1105 (9th Cir. 1998).

Reiser was not a joint user of the cardboard box, negating her ability to provide consent to search it. This case is not analogous to circumstances where a container is used jointly by two people, allowing either user to provide consent to a search of it, and the other assumes the risk that their co–user might allow others, including police, to look inside. *Frazier v. Cupp*, 394 U.S. 731, 740 (1969).

The burden lies solely with the government to "establish a third party had authority to consent to a search." *Id*. Furthermore, this "burden cannot be met if agents, faced with an ambiguous situation, nevertheless proceed without making further inquiry." *Id*. The failure to inquire is fatal under the ambiguity approach required by Fourth Amendment principles.

Even under the more permissive "obviousness" approach used in some circuits, the search was invalid. The obviousness test permits reliance on consent only where a container does not appear to belong exclusively to another person. *Snype*, 441 F.3d at 136. Reiser's statements to

Agent Ristroph put him on notice that this cardboard box exclusively belonged to Mr. Hemlock. Its placement, combined with her statements disclaiming use of that area, created a clear manifestation that the container was associated with Mr. Hemlock rather than Reiser. R.15 Agent Ristroph had reason to know the closed container belonged to Mr. Hemlock, not Reiser, thus negating his authority to search the cardboard box. *Melgar*, 227 F.3d at 1041–42. At minimum, the circumstances made exclusive ownership plausible enough that reliance on Reiser's consent was unreasonable without further inquiry. Agent Ristroph had positive knowledge that the cardboard box belonged to Mr. Hemlock, a clear manifestation of privacy, making his reliance on Reiser's consent unreasonable. *Snype*, 441 F.3d at 119. Thus, even under the Second and Seventh Circuit framework, Agent Ristroph lacked a reasonable basis to believe Reiser could authorize the search.

Because Reiser lacked both actual and apparent authority over the closed container, and because Agent Ristroph failed to resolve the ambiguity before intruding into a private closed container, the search fell outside of the scope of Reiser's consent and was unreasonable. The warrantless opening of the cardboard box violated Mr. Hemlock's Fourth Amendment rights, and the physical evidence recovered from it must be suppressed. Accordingly, this Court should reverse the Fourteenth Circuit's decision and hold that the search of the container exceeded the scope of valid third–party consent.

II. Federal Rule of Evidence 806 authorizes the use of extrinsic evidence to impeach an unavailable hearsay declarant.

This Court's resolution of this issue turns on the proper interpretation and interaction of Federal Rules of Evidence 806 and 608(b). As demonstrated below, when the Rules are read together and in context, they create a genuine ambiguity in the setting of an unavailable hearsay declarant. Applying settled canons of interpretation resolves that ambiguity in favor of permitting extrinsic impeachment under Rule 806, while preserving the distinct trial–management function

of Rule 608(b). The courts below did not undertake this proper analysis and instead applied Rule 608(b) mechanically, resulting in legal error.

A. The interaction between Rules 806 and 608(b) create a contextual ambiguity that must be resolved through interpretation of the Federal Rules of Evidence.

The Federal Rules of Evidence are legislative enactments interpreted using traditional principles of interpretation. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 163 (1988). Because this dispute turns on the reading and interaction of the Federal Rules of Evidence, it presents a pure question of law reviewed de novo. *Id.* A reviewing court does not examine a single rule in isolation, but considers how the rule operates within the broader statutory scheme. *FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120, 132–33 (2000). Statutory meaning, and any resulting ambiguity, may become apparent only when a rule is read in context, and in relation to other provisions governing the same subject matter. *Id*. at 132. As the Supreme Court has explained, "ambiguity is a creature not of definitional possibilities but of statutory context." *Id*. (quoting *Brown v. Gardner*, 513 U.S. 115, 118 ((1994)).

1. Rule 806 was designed to ensure meaningful credibility testing of unavailable hearsay declarants.

Federal Rule of Evidence 806 governs the impeachment and rehabilitation of a declarant whose out–of–court statement is admitted for its truth. FED. R. EVID. 806. The rule provides that:

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

FED. R. EVID. 806.

Hearsay is a declarant's out of court statement used for the truth of the matter asserted. FED. R. EVID. 801. A statement refers to "a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." *Id.* A declarant is defined as the person who made that statement. *Id.*

The Advisory Committee explained that "the declarant of a hearsay statement which is admitted in evidence is in effect a witness," and that "his credibility should in fairness be subject to impeachment and support as though he had in fact testified." FED. R. EVID. 806 advisory committee's notes to 1972 proposal. Thus, Rule 806 reflects a foundational fairness principle: hearsay cannot be admitted for its truth while simultaneously escaping credibility testing. *United States v. Graham*, 858 F.2d 986, 990 (5th Cir. 1988). The rule was enacted to address the "special aspects of the impeaching of a hearsay declarant" that arise precisely because the declarant does not appear at trial. FED. R. EVID. 806 advisory committee's notes to 1972 proposal.

Congress reinforced the principle of meaningful impeachment when it amended Rule 806 in 1974 to include statements defined in Rules 801(d)(2)(C), (D), and (E),[1] thereby ensuring that declarants whose statements are admitted as party–opponent admissions are likewise subject to credibility attacks. S. REP. NO. 93–1277. The Committee adopted the Senate's Amendment to "conform the rule to present practice," reflecting a legislative judgment that the admission of credibility–bearing statements must carry corresponding exposure to impeachment. H.R. REP. NO. 93–1597.

[1] *See* FED. R. EVID. 801(d)(2)(C) – (E) (excluding from hearsay authorized statements, agent or employee statements made within the scope of the relationship, and coconspirator statements made during and in furtherance of a conspiracy).

Consistent with that design, courts have recognized that Rule 806 governs the impeachment of hearsay declarants once their statements are admitted, while leaving determinations of probative value and admissibility to the trial court's discretion. In *United States v. Friedman*, the Second Circuit explained that Rule 806 applies where "the declarant has not testified and there has by definition been no cross–examination," such that "resort to extrinsic evidence may be the only means of presenting such evidence to the jury." 854 F.2d 535, 570 n.8 (2d Cir. 1988). The court emphasized, however, that impeachment evidence offered under Rule 806 must bear a meaningful relationship to the credibility of the hearsay statements admitted, and that evidence lacking such a connection may properly be excluded under Rule 403. *Id.* at 569. Thus, Friedman confirms Rule 806's operative principle: once hearsay is admitted for its truth, the declarant's credibility is subject to impeachment notwithstanding the declarant's absence. *Id.* at 570 n.8. Rule 608(b), however, was drafted to regulate a fundamentally different evidentiary setting, and addresses concerns that arise only when a witness testifies and may be cross–examined.

2. Rule 608(b) was designed as a trial–management tool to regulate live cross examination.

Federal Rule of Evidence 608 governs the use of character evidence to attack or support a witness's character for truthfulness or untruthfulness. FED. R. EVID. 608. Subsection (a) permits opinion or reputation evidence concerning a witness's character for truthfulness, but only after the witness's character has been attacked. FED. R. EVID. 608(a). Subsection (b) addresses a narrower category of impeachment and provides that:

> Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross–examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of: (1) the witness; or (2) another witness whose character the witness being cross–examined has testified about. By

> testifying on another matter, a witness does not waive any privilege against self–incrimination for testimony that relates only to the witness's character for truthfulness.

FED. R. EVID. 608(b).

Rule 608(b) was adopted in conformity with Rule 405's limitation on proving character through specific acts and reflects the prevailing common law judgment that credibility impeachment should be confined to veracity, rather than character generally.[2] FED. R. EVID. 608 advisory committee's notes. The Committee explained that this limitation exists "to sharpen relevancy, to reduce surprise, waste of time, and confusion," and to make the process of testifying less burdensome. FED. R. EVID. 608 advisory committee's notes. A central rationale for Rule 608(b)'s bar on extrinsic evidence is to prevent "mini–trials on wholly collateral matters which tend to distract and confuse the jury." *Carter v. Hewitt*, 617 F.2d 961, 971 (3d Cir. 1980).

Although Rule 608(b) permits limited inquiry into specific instances on cross–examination, the Committee emphasized that "the possibilities of abuse are substantial," requiring strict judicial control. FED. R. EVID. 608 advisory committee's notes. Accordingly, any such inquiry remains subject to Rule 403's balancing requirement and Rule 611's mandate to avoid harassment, undue embarrassment, and confusion of issues.[3]

In its 2003 amendment, the Committee clarified that Rule 608(b)'s prohibition on extrinsic evidence applies only when the evidence is offered solely to prove a witness's character for truthfulness. FED. R. EVID. 608 advisory committee's notes to 2003 amendment. Extrinsic evidence

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[2] *See* FED. R. EVID. 405 (governing methods of proving character by reputation or opinion evidence and, when character is an essential element of a charge, claim, or defense, by specific instances of conduct).

[3] *See* FED. R. EVID. 403 (authorizing exclusion of relevant evidence when its probative value is substantially outweighed by dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting time, or needless presentation of cumulative evidence); *See also* FED. R. EVID. 611 (granting courts control over the mode and order of examining witnesses and presenting evidence to ensure effective truth–finding, avoid wasting time, and protect witnesses from harassment or undue embarrassment).

offered for other impeachment purposes (such as impeachment by bias) is governed by Rules 402 and 403. *Id.; United States v. Abel*, 469 U.S. 45, 51 (1984).

Rule 608(b) therefore operates as a rule of trial management, regulating how credibility disputes involving testifying witnesses are presented to the jury to prevent collateral detours, unfair surprise, and confusion. FED. R. EVID. 608 advisory committee's notes. Because its extrinsic evidence limitation is justified only by those concerns, the limitation "loses its force" where impeachment does not threaten collateral mini–trials or unfair surprise, and the Rule may not be applied mechanically to foreclose credibility testing. *Carter*, 617 F.2d at 971–72.

Saada demonstrates why ambiguity arises as applied. *United States v. Saada*, 212 F.3d 210, 221(3d Cir. 2000). The Third Circuit acknowledged the competing interpretations created by Rules 806 and 608(b) in the unavailable declarant setting. *Id*. Yet, the court adopted the opposite view, stating its conclusion was dictated by the "plain albeit imperfectly meshed" language of Rules 806 and 608(b). *Id*. Where a court concedes that two rules governing the same evidentiary event are "imperfectly meshed," it has identified contextual ambiguity, not resolved it. The resulting structural impasse is contextual ambiguity, and it triggers the duty to construe the Rules as a coherent scheme rather than permitting one to defeat the other's operative effect. That unresolved tension creates a contextual ambiguity requiring application of the canons of harmonization and preservation.

B. Proper interpretation of the Federal Rules of Evidence resolves the ambiguity in favor of allowing extrinsic impeachment under Rule 806.

1. Excluding extrinsic evidence would nullify Rule 806 and violate the canon against surplusage.

As the Supreme Court has emphasized, "the cardinal principle of statutory construction is to save and not to destroy," and courts must avoid interpretations that would "emasculate an entire section." *Id.* (quoting *Labor Bd. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937)). A

construction that renders one provision inoperative, superfluous, or without practical effect is therefore disfavored. *Id*.

Before applying any canon of preservation, the analysis must begin with the operative language Congress chose in Rule 806. That Rule provides that once a hearsay statement is admitted for its truth, "the declarant's credibility may be attacked […] by any evidence which would be admissible for those purposes if the declarant had testified as a witness." FED. R. EVID. 806 (emphasis added). This clause is not precatory or discretionary; it is an affirmative grant of impeachment authority tied to the admission of hearsay itself. Giving effect to this provision in Rule 806 therefore requires that courts preserve a meaningful mechanism by which a declarant's credibility can, in fact, be tested.

A construction of Rule 608(b) that operates as an absolute, mechanical bar in the unavailable–declarant context directly nullifies that express command. When interpreting the Federal Rules of Evidence, courts apply the preservation canon, which requires giving effect to every clause and word of a rule wherever possible. *United States v. Menasche*, 348 U.S. 528, 538–39 (1955). By foreclosing extrinsic impeachment while simultaneously presupposing cross–examination as the sole permissible method, such a reading converts Rule 806's guarantee that credibility "may be attacked" into an empty formality. Because a mechanical application of Rule 608(b) would nullify Rule 806's express authorization of impeachment, the Rules must be construed to preserve the operative effect of both provisions. A mechanical application of either Rule in isolation confirms the impropriety of that construction.

2. A contrary interpretation produces absurd results by granting greater protection to absent declarants than to live witnesses.

In interpreting the Federal Rules of Evidence, this Court applies the text as written unless doing so would produce an absurd result or nullify an operative provision. *Hartford Underwriters*

Ins. Co. v. Union Planters Bank, 530 U.S. 1, 6 (2000). Although the absurdity doctrine is narrow, it applies where an interpretation produces consequences "so gross as to shock the general moral or common sense," rather than outcomes that are merely awkward, imperfect, or anomalous. *Lara Aguilar v. Sessions*, 889 F.3d 134, 144 (4th Cir. 2018) (quoting *Sigmon Coal Co. v. Apfel*, 226 F.3d 291, 304 ((4th Cir. 2000)).

Reading Rule 608(b) as a mechanical bar in the unavailable declarant context fits squarely within that standard. Rule 806 expressly provides that once hearsay is admitted for its truth, the declarant's credibility "may be attacked" as though the declarant had testified. FED. R. EVID. 806. Yet a rigid application of Rule 608(b) in this setting forecloses every meaningful method of impeachment: the declarant cannot be cross examined, Rule 608(b)'s inquiry mechanism presupposes a live witness, and extrinsic evidence is categorically excluded. The result is not a limitation on impeachment, but its elimination.

That outcome cannot be reconciled with the structure or purpose of the Federal Rules of Evidence. Rule 608(b) was adopted as a rule to serve the purpose of trial management, designed to prevent collateral mini–trials, surprise, and confusion when testifying witnesses are impeached through specific acts. *Carter*, 617 F.2d at 971. Those concerns do not translate to the context of Rule 806, where impeachment necessarily occurs without live testimony, and where extrinsic evidence may be the only available means of credibility testing. Treating Rule 608(b) as mechanically controlling in this context transforms a procedural safeguard into a substantive bar and nullifies Rule 806's operative command.

These Rules contemplate fundamentally different trial contexts: one assumes a witness on the stand, the other presumes the witness's absence. Construing the Rules in that manner produces a result that is not merely awkward or imperfect, but so structurally incompatible with the Federal

Rules of Evidence that it shocks common sense. Courts are obligated to construe related provisions harmoniously, not to privilege one rule in isolation in a way that renders another meaningless.

C. The District Court and the Fourteenth Circuit resolved the ambiguity mechanically, not through statutory construction.

Having established the distinct purposes of Rules 806 and 608(b), the question becomes how the courts below resolved their interaction once the hearsay statement was admitted for its truth. The issue in this case is not whether Rule 608(b) limits the use of extrinsic evidence in general. It is whether Rule 608(b) can be applied mechanically in a manner that forecloses the operation of Rule 806 once hearsay has been admitted for its truth.

At trial, the Government introduced testimony recounting an out–of–court statement by Copperhead that expressly attributed responsibility for the charged conduct to Mr. Atticus Hemlock. R.43. The district court admitted that statement for its truth under the excited utterance exception. R.43. That ruling triggered Rule 806 by its plain terms.

Rule 806 provides that when a hearsay statement has been admitted in evidence, "the declarant's credibility may be attacked." FED. R. EVID. 806. The Rule's application turns solely on the admission of hearsay for its truth. It does not depend on whether the declarant testifies, the method by which impeachment is attempted, or the identity of the party seeking to impeach. Once Copperhead's statement was admitted, Rule 806 applied as a matter of law.

The interpretive question arose when the Government objected to Mr. Hemlock's attempt to impeach Copperhead under Rule 806, invoking Rule 608(b) as an absolute bar to the use of extrinsic evidence. R.47. At sidebar, the Government argued that Rule 608(b) categorically barred the admission of extrinsic evidence and that Rule 806 "is not intended to be a way to get around the prohibition of extrinsic evidence so clearly articulated in Rule 608(b)." R.49. The Government further asserted that because Mr. Hemlock would not have been permitted to introduce extrinsic

evidence had Copperhead testified, such evidence was likewise barred simply because the declarant was unavailable. R.49. The district court sustained that objection without analyzing how Rule 806's express authorization that a declarant's credibility "may be attacked" could be given operative effect when cross–examination was impossible. R.50.

Rather than construing the Rules together, the district court resolved that question by applying Rule 608(b) mechanically and excluding the impeachment evidence without analysis of Rule 806's operative command. The Fourteenth Circuit then affirmed, likewise treating Rule 608(b)'s extrinsic evidence limitation as dispositive. R.57–58. In doing so, the court acknowledged that Copperhead's hearsay statement was a "significant component" of the Government's case and that Rule 806 applies, but it concluded that Rule 806 "does not enlarge the scope of permissible impeachment beyond what the Rules otherwise permit." R.57.

That reasoning does not resolve the interpretive question presented. The issue is not whether Rule 806 enlarges impeachment beyond the Federal Rules of Evidence. The issue is whether Rule 608(b) may be applied in a manner that eliminates every mechanism for exercising the impeachment Rule 806 expressly authorizes once hearsay is admitted for its truth.

The Fourteenth Circuit reasoned that because Mr. Hemlock could not have introduced extrinsic evidence of Copperhead's prior misconduct had she testified, he likewise could not do so when she did not testify. R.57. That reasoning assumes the continued availability of cross examination even though the declarant was unavailable. Rule 608(b)'s limitation on extrinsic evidence is inseparable from its cross examination based mechanism. When cross examination is impossible, Rule 608(b) does not answer how impeachment authorized by Rule 806 is to occur. Treating Rule 608(b)'s live–witness framework as universally controlling substitutes mechanical application for statutory construction.

The Fourteenth Circuit further relied on Rule 806's silence regarding extrinsic evidence, comparisons to Rule 613, and concerns about judicial efficiency and collateral mini–trials. R.58. However, once Rule 806 is triggered, courts are required to construe the Rules as a coherent statutory scheme, and to give effect to Rule 806's operative command that the declarant's credibility "may be attacked." Silence may not be used to nullify an express authorization, and policy concerns about prejudice, confusion, or trial management are addressed through other provisions of the Rules, not by erasing Rule 806's function.

Under the construction adopted below, Rule 806 has no practical effect. The declarant cannot be cross examined, Rule 608(b)'s inquiry mechanism is unavailable, and extrinsic evidence is categorically excluded. *Friedman* recognized that the result is not a limitation on impeachment, but its elimination. A Rule that provides that credibility "may be attacked," yet affords no mechanism for doing so, is not being interpreted. It is being nullified.

Importantly, construing Rule 806 to permit extrinsic impeachment in this limited context does not eliminate evidentiary safeguards or render impeachment automatic. It preserves Rule 806's operative effect while leaving intact other provisions of the Federal Rules of Evidence that independently govern admissibility. District courts retain authority under Rule 403 to exclude evidence that is unfairly prejudicial, confusing, cumulative, or of limited probative value, and authority under Rule 611 to control the mode and presentation of evidence. Allowing extrinsic impeachment under Rule 806 therefore preserves both Rules by assigning each to its proper function, rather than displacing Rule 608(b) with no substitute constraints.

Proper statutory construction resolves the acknowledged tension by recognizing the distinct domain of the two Rules. Rule 608(b) operates as a trial–management provision governing impeachment of live witnesses through cross examination. Rule 806 operates as a remedial

provision governing impeachment of hearsay declarants who do not testify. Construing the Rules in that manner gives effect to both without expanding either. Because the Fourteenth Circuit resolved the interaction between Rules 806 and 608(b) without construing the Federal Rules of Evidence as a coherent statutory scheme, its judgment rests on legal error. Review is warranted, and the judgment should be reversed.

CONCLUSION

For the foregoing reasons, the judgment of the Fourteenth Circuit should be reversed. The warrantless arrest of Mr. Hemlock in his home, compelled by a coercive show of authority at the threshold of his home, violated the Fourth Amendment. The subsequent warrantless search of a closed container exceeded the scope of any valid third–party consent and was likewise unreasonable. And the exclusion of extrinsic impeachment evidence nullified Rule 806 by foreclosing any meaningful opportunity to test the credibility of an unavailable hearsay declarant whose statement was admitted for its truth. This Honorable Court should reverse the judgment below and remand the case for further proceedings consistent with the Constitution and the Federal Rules of Evidence.

Respectfully Submitted,

Team 19
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