

**IN THE
SUPREME COURT OF THE UNITED STATES**

Case No. 25-7373

ATTICUS HEMLOCK,

Petitioner ,

v.

UNITED STATES OF AMERICA,

Respondent .

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT, THE UNITED STATES OF AMERICA

Attorneys for the Respondent

QUESTIONS PRESENTED

- I. Whether, under *Payton v. New York*, the Fourth Amendment is violated when law enforcement officers, who never step within a suspect's home, direct a suspect 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 common area in a shared residence after obtaining consent from a co-occupant with apparent authority.

- III. Whether, under Rule 806 of the Federal Rules of Evidence, which permits impeachment of a hearsay declarant's credibility, extrinsic evidence of specific instances of the declarant's conduct is admissible to impeach their character for truthfulness when the declarant is unavailable to testify at trial.

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OPINIONS BELOW

The transcripts of the hearing on the constitutional issues before the United States District Court for the Northern District of Boerum appears on the record at pages 18–37 and for the impeachment of a hearsay declarant issue at pages 46–50. The opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 51–61.

CONSTITUTIONAL PROVISIONS

The text of the following 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 FACTS

In February 2024, the United States Department of Tourism (“Department”) announced the “Grown Your Own Way Program” (“Program”). (R. 3.) This Program would allow landowners to sell their farmland to the government create public gardens. (R. 3.) The Department also announced that it would be visiting different towns across the nation to meet with interested landowners and provide them with information on the Program. (R. 3.) One of the towns the Department planned to visit was Boerum Village. (R. 4.) Under Secretary for Rural Development, Jodie Wildrose (“Ms. Wildrose”), was to lead the Department’s visit in Boerum Village from April 8, 2024, until April 12, 2024. (R. 4.)

I. The Boerum Village Police Department received two reports of suspicious activity concerning the kidnapping of a federal official.

Approximately a month after the Department announced the Program, the Boerum Village Police Department received two separate reports of suspicious activity from two individuals. (R. 6, 7.) The first report the Boerum Village Police Department received was from Elvis Hoag (“Hoag”) on March 29, 2024. (R. 7.) Hoag, a barista at a Boerum coffee shop, reported that two individuals were seated at a table in the back of the coffee shop on March 28 and 29, 2024, from about 8:30 in the morning until around 12:30 in the afternoon. (R. 7.) The barista observed suspicious behavior from the pair: the two talked over binders, papers, detailed timelines, and maps; repeatedly referred to someone named “Jodie”; and had an overall demeanor that Hoag described as “excited, agitated, and obnoxious.” (R. 7, 8.) Hoag also heard the two say things like “hiding Jodie away,” “nabbing Jodie,” and how a parking lot would be a better place to get Jodie. (R. 8.) Hoag was compelled to report his observations because he “felt in his gut that something was not right.” (R. 8.)

The next day, the Boerum Village Police Department received a call from Tina Caplow (“Caplow”) regarding a purchase made by two individuals. (R. 6.) Caplow was the manager at a local superstore where she witnessed two individuals buy zip ties, ski masks, trash bags, bear spray, and a six-inch folding knife. (R. 6.) She reported that the two individuals, a male and a female, purchased these items with cash on March 30, 2024, around 11 o’clock in the morning. (R. 6.) Caplow did not overhear any conversation between the individuals, nor did she recognize them, but made the report because “their demeanor made her suspicious of criminal activity.” (R. 6.)

The Boerum Village Police Department referred Hoag's report to the FBI's Boerum City field office because Hoag overheard one of the individuals call "Jodie" a federal government official. (R. 7, 8) Both Caplow and Hoag were interviewed on April 2, 2024 (R. 6, 7.) Hoag identified the two individuals as Atticus Hemlock ("Defendant") and Iris Copperhead ("Ms. Copperhead") and showed the interviewing agents the individuals' respective Instagram accounts. (R. 6, 7.)

II. The Defendant was arrested based on probable cause, and his home was subsequently searched.

On the afternoon of April 2, 2024, Special Agents Ava Simonson ("Agent Simonson") and Hugo Herman ("Agent Herman") arrived at the Defendant's home to gather more information based on the reports made by Hoag and Caplow. (R. 20, 21.) Agents Herman and Simonson drove an unmarked car and wore khakis, black polo shirts, and their officer duty belts. (R. 25, 29.) Agent Simonson walked up the front steps and knocked on the door frame upon arrival (R. 21.) After knocking, she returned to stand next to Agent Herman, who was three to four feet away from the bottom stair. (R. 21.) During their conversation with the Defendant, the agents observed bottles of chloroform on his counter. (R. 11.) The Defendant was hesitant to speak with the agents but eventually brought up Ms. Wildrose unprompted. (R. 11.) At this point the agents' suspicions were heightened, and they asked the Defendant to step outside. (R. 22, 23). The Defendant complied with the request, and Agent Simonson promptly placed him under arrest. (R. 23.) In one of the Defendant's pocket's, Agent Herman found a notebook that detailed the Defendant's plan to kidnap Ms. Wildrose. (R. 23, 24.)

Special Agent Kiernan Ristroph ("Agent Ristroph") arrived at the Defendant's home about thirty minutes later and was instructed by Agent Herman to wait for the Defendant's

girlfriend to arrive home. (R. 13.) When the Defendant’s girlfriend, Fiona Reiser (“Ms. Reiser”) returned, Agent Ristroph approached the home, informed Ms. Reiser of the Defendant’s arrest, and asked to conduct a search of the home. (R. 13.) Agent Ristroph noticed an unmarked cardboard box at the bottom of the staircase during his search. (R. 13.) Within the box, Agent Ristroph found rope, ski masks, duct tape, gloves, zip ties, a knife, and chloroform. (R. 13.)

III. A Boerum resident witnessed Iris Copperhead’s outburst.

Theodore Kolber (“Mr. Kolber”) was on a walk in Joralemon State Park (located near the defendant’s home) around 4 p.m. on the afternoon of the Defendant’s arrest. (R. 41.) Mr. Kolber heard a “commotion” about ten minutes into his walk, which was shortly after the Defendant’s arrest. (R. 42.) The “commotion” was Ms. Copperhead; Mr. Kolber observed her to be pale and shaky, with had tears streaked down her face. (R. 42.) Mr. Kolber asked Ms. Copperhead if she was okay, and she exclaimed, “I can’t believe I saw him get arrested. It’s all his fault. It was all Atticus’ idea– NOT MINE!” (R. 43.) Ms. Copperhead ran off and Mr. Kolber did not see her again. (R. 44.) The following morning, Mr. Kolber saw Ms. Copperhead’s mugshot in the paper and called the tipline to explain his previous interaction with Ms. Copperhead. (R. 45). On April 2, 2024, Ms. Copperhead was arrested but died in jail due to an aortic rupture. (R. 46.)

STATEMENT OF THE CASE

On April 3, 2024, a grand jury formally indicted the Defendant on one count of attempting to kidnap a United States government officer under 18 U.S.C. §§ 1201(a)(5) and 1201(d). (R. 1.) Prior to trial, the Defendant filed two motions to suppress. (R. 19.) The first motion sought to suppress a notebook that federal agents seized upon arresting the Defendant.

(R. 19.) The second sought to suppress the contents of a cardboard box found in a search of the Defendant's home, conducted pursuant to his girlfriend's consent. (R. 31.) The United States District Court for the Northern District of Boerum heard oral arguments on July 29, 2024, and ultimately denied each motion to suppress. (R. 31, 39.)

On August 6, 2024, the Government called Mr. Kolber, a lifelong resident of Boerum Village, to the stand. (R. 41.) Mr. Kolber testified to seeing the Defendant's alleged co-conspirator, Ms. Copperhead, on the afternoon of April 2, 2024. (R. 41, 44.) In response to the Government's questions, Mr. Kolber further testified that he heard Ms. Copperhead shouting about the Defendant's arrest and that their plan was "all Atticus' idea." (R. 43.) The defense objected to Mr. Kolber's testimony, asserting hearsay. *Id.* The Government argued that Ms. Copperhead's statements were admissible under Rule 803(b) as excited utterances because they were related to the "startling event" of the Defendant's arrest, and she was clearly under the stress of excitement. (R. 43, 44.) The district court agreed with the Government's argument and overruled the defense's objection. (R. 44.)

During the defense's case-in-chief, it sought to introduce into evidence a letter from Court Street College about an academic violation Ms. Copperhead received, as well as a falsified job application Ms. Copperhead submitted in January 2024. (R. 47-49.) The Government objected to both pieces of extrinsic evidence, arguing that the defense was precluded from offering it to undermine Ms. Copperhead's credibility under Rule 608(b). (R. 47, 48.) In response, the defense argued that the evidence was admissible pursuant to Rule 806. (R. 49, 50). The defense explained that Rule 806 protects against requiring a defendant to accept a hearsay

declarant's credibility at face value and allows that declarant's credibility to be undermined in the same manner as a live witness. (R. 49.) The district court ultimately sustained the Government's objection, holding that the defense could not introduce the documents or testimony related to them for the purpose of impeaching Ms. Copperhead. (R. 50.)

On August 12, 2024, a jury convicted the Defendant of attempting to kidnap a United States government officer, and he was later sentenced to a 10-year prison term. (R. 51.) Following his conviction, the Defendant appealed to the United States Court of Appeals for the Fourteenth Circuit. *Id.* On appeal, the Defendant raised three challenges to his conviction: (1) the seizure of the notebook incident to his warrantless arrest violated his Fourth Amendment rights and was thus improperly admitted at trial; (2) the search of his shared home pursuant to his girlfriend's consent did not extend to the cardboard box, therefore evidence from the box was improperly admitted at trial; and (3) that the lower court erred in excluding the letter regarding Ms. Copperhead's academic violation and her fraudulent job application. (R. 51.) The Fourteenth Circuit affirmed the lower court's ruling on all three grounds. *Id.* The Defendant appealed the Fourteenth Circuit's decision to this Court, which then granted certiorari on all three issues on December 2, 2025. (R. 62.)

SUMMARY OF THE ARGUMENT

The Defendant's Fourth Amendment rights were not violated under *Payton v. New York* when he was arrested outside of his home without a warrant. Therefore, the notebook in the Defendant's pocket seized during the arrest was properly admitted. The law enforcement agents never entered the Defendant's home prior to or during his arrest. Moreover, the constructive

entry doctrine contradicts this Court's holding in *Payton*. The doctrine is unclear and lacks guidance. However, even if this Court decides to adopt the constructive entry doctrine, the Defendant's Fourth Amendment rights were not violated because no coercion took place.

The evidence found within the closed cardboard box was properly admitted at the Defendant's trial. The law enforcement agent who conducted the search had a reasonable belief that Ms. Reiser had the apparent authority to provide consent. The Defendant's girlfriend, Ms. Reiser, possessed apparent authority over the box because it was located in the common area of their shared residence. Further, Ms. Reiser did not limit the scope of her consent and did not restrict the law enforcement agent from searching the box.

Extrinsic evidence of Ms. Copperhead's prior misconduct was properly excluded at trial. Rule 806 of the Federal Rules of Evidence does not allow the admission of extrinsic evidence of specific instances of conduct in order to impeach a hearsay declarant's credibility. This Court should adopt the majority approach of interpreting the intersection of Rule 806 and Rule 608(b) to settle the split among the circuits. The district court is best suited to assess the facts and is vested with broad discretion in ruling on evidentiary issues. Furthermore, the probative value of admitting Ms. Copperhead's prior academic violation and misrepresentation on a job application is substantially outweighed by the danger of misleading the jury from the primary issues at hand.

ARGUMENT

I. The Government did not violate the Defendant's Fourth Amendment right because the law enforcement officers did not enter the Defendant's home in order to effect his arrest.

The Fourteenth Circuit correctly applied this Court's precedent to determine that the arrest of the Defendant was valid, and therefore the notebook was lawfully seized, and not the fruit of an illegal arrest. This Court was clear in its holding of *Payton v. New York*: law

enforcement officers are prohibited from making a “warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest.” 445 U.S. 573, 576 (1980). Further, the constructive entry doctrine should not be adopted by this Court because it is a legal fiction that does nothing but disturb the clear line drawn by *Payton*. Even if this Court decides to adopt the constructive entry doctrine, the Defendant’s Fourth Amendment right was still not violated because no coercion took place. For these reasons, this Court should affirm the decision below.

A. The Defendant’s arrest did not violate the Fourth Amendment because law enforcement officers may arrest a suspect in public without a warrant.

Not only does the Fourth Amendment protect the right of individuals to be “secure” in their “persons, houses, papers, and effects,” it also safeguards individuals from “unreasonable searches and seizures.” U.S. Const. amend. IV. This Court has established that a seizure of an individual “plainly refers to an arrest.” *Torres v. Madrid*, 592 U.S. 306, 312 (2021). Further, this Court has consistently held that arrests made in public, with probable cause, do not require a warrant¹. See *Payton v. New York*, 445 U.S. 573 (1980); *United States v. Santana*, 427 U.S. 38 (1976); *United States v. Watson*, 423 U.S. 411 (1976). Arrests in public are far less intrusive than arrests within the home because what an individual “knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” *Katz v. U.S.*, 389 U.S. 347, 351 (1967).

This Court has already addressed the constitutionality of law enforcement officers entering a suspect’s home to perfect an arrest without a warrant in *Payton v. New York*. It was made abundantly clear in *Payton* that warrantless arrests in public are acceptable; however, arrests within the home are of a different nature. This is because the “chief evil” the Fourth

¹ The Defendant does not argue that the federal agents in the present case lacked probable cause to arrest him.

Amendment is meant to protect is against the “physical entry” of one’s home. *Payton*, 445 U.S. at 587 (citing *United States v. United States District Court*, 407 U.S. 297, 313 (1972)).

Therefore, the Fourth Amendment places a heavy burden on law enforcement officers who enter a suspect’s home without a warrant or consent. Because entry into one’s home is so invasive, this Court has been very careful to define clear boundaries regarding the entry of the home.

While the Fourth Amendment protects an individual’s privacy in a “variety of settings,” none of those settings is more “clearly defined” than within the “unambiguous *physical* dimensions” of someone’s home. *Payton* at 489. (emphasis added). The physical structure of a home—the four walls and a roof—is what is specifically constitutionally protected: “the right of the people to be secure in their... *houses*... shall not be violated.” U.S. Const. amend. IV. (emphasis added). Quoting *Silverman v. United States*, 365 U.S. 505 (1961), this Court explained in *Payton* that in its simplest terms, the Fourth Amendment “unequivocally” gives man the right to “retreat into his own home and there be free from unreasonable governmental intrusion.” 445 U.S. at 489. In *Payton*, this Court drew a “firm line at the entrance to the house.” *Id.* at 590. Without a warrant, that “threshold” may only be crossed in “exigent circumstances.” *Id.*

The threshold provided by *Payton* was never crossed in the case at hand. (R. 23.) The Defendant was arrested outside the “unambiguous physical dimensions” of his home. 445 U.S. at 489. Because the Defendant was arrested outside of his home, this Court should affirm the Fourteenth Circuit’s ruling that there was no Fourth Amendment violation and therefore the motion to suppress the notebook was properly denied.

B. This Court should not adopt the constructive entry doctrine because it is a legal fiction that is inconsistent with the holding of Payton v. New York.

A few circuits have diverged from this Court’s holding in *Payton* and have adopted the constructive entry doctrine. This doctrine provides that law enforcement officials violate *Payton*

when they lure or coerce a suspect out of the home to execute an arrest without a warrant. *See U.S. v. Morgan*, 743 F.2d 1158 (6th Cir. 1984). The circuits that recognize the doctrine hold that *Payton* can be violated even in situations where officers never physically cross the threshold. *See U.S. v. Reeves*, 524 F.3d 1161 (10th Cir. 2008); *U.S. v. Maez*, 872 F.2d 1444 (10th Cir. 1989). The constructive entry doctrine provides no guidance and only creates confusion for law enforcement officers and the courts that must decide these issues.

It is well established that the Fourth Amendment protects an individual's "legitimate expectation of privacy." *United States v. Berkowitz*, 927 F.2d 1376 (7th Cir. 1991). A person's privacy interest is not abandoned when he opens his door to answer a knock. In *Berkowitz*, the Seventh Circuit explained that the right to exclude is one of the most, "if not the most," significant components of a person's privacy interest in his home. 927 F.2d at 1387. It is an entirely different situation, however, when an officer enters a suspect's home without a warrant or consent to complete an arrest. In that case, the suspect still has a "privacy interest" in the home because he has not yet "relinquished his right to close the door on unwanted visitors." *Id.* As the Seventh Circuit correctly stated, "Payton did not draw the line one or two feet into the home; it drew the line at the home's entrance." *Id.* at 1388. The *Berkowitz* case correctly demonstrates how *Payton* should be interpreted. This Court provided a clear, unambiguous rule, and the constructive entry doctrine directly contravenes it.

Not only does the constructive entry doctrine contradict the ruling in *Payton*, but it also lacks practical guidance for law enforcement officials and courts. In these situations, district courts are already tasked with the "close fact-finding" determination of whether an arrest took place on, at, in, or by the threshold. *United States v. Allen*, 813 F.3d 76 (2d Cir. 2016). The constructive entry doctrine would only "multiply the difficulties of applying the rule" of *Payton*.

Id. at 88. This Court should not adopt a doctrine that adds “an additional layer of uncertainty” to the inquiry, especially for law enforcement officials. *Id.* Law enforcement agents are required to make quick decisions, often in high-risk situations. *Payton* provides agents with a precise and exact rule to follow. Any deviation from the rule will only serve to complicate the clarity *Payton* provides.

The Second Circuit was correct when it plainly stated that the “constructive entry rule strikes us as conceptually muddled.” *Allen*, 813 F.3d at 88. The constructive entry doctrine should not be adopted by this Court. Because the Fourteenth Circuit was correct in declining to adopt the constructive entry doctrine, its decision should be affirmed.

C. Even if this Court decides to recognize the constructive entry doctrine, the Defendant was not coerced outside of his home.

The Defendant’s contention that he was coerced outside of his home is unfounded. The officers in the present case behaved nothing like the officers in *United States v. Maez*, 872 F.2d 1444 (10th Cir. 1989). In the *Maez* case, both the FBI and a SWAT team surrounded the suspect’s home. *Id.* at 1447. The agents were dressed in all black, ordered the residents to exit the home over a loudspeaker, and, according to the suspect’s mother, had rifles pointed at the house. *Id.* In *United States v. Morgan*, the Sixth Circuit determined that a suspect’s arrest violated *Payton* under the constructive entry doctrine because a squad of nine officers surrounded the defendant’s home. 743 F.2d at 1168. There, law enforcement officers “flooded” the defendant’s home with spotlights and used a bullhorn to order the suspect outside. 743 F.2d at 1161. Another example of “coercion” appears in *United States v. Reeves*. In *Reeves*, officers repeatedly called the suspect’s hotel room in an attempt to lure the suspect outside. Officers then began knocking “very loudly” on the door and window with their police-issued metal flashlights. 524 F.3d at 1165. The suspect finally came to the door after “twenty minutes of yelling and

banging.” *Id.* In all of these cases, the courts found that the defendant’s Fourth Amendment right was violated under *Payton*, even though law enforcement officials never set foot within the suspect’s home.

Even if this Court decides to recognize the constructive entry doctrine, the Defendant’s claim that he was coerced out of his home is simply incorrect. Unlike the cases in the Sixth and Tenth Circuits, where the suspects ultimately relented to the pressure from law enforcement officials, the Defendant here voluntarily exited his home. In the case at hand, the two agents knocked on the Defendant’s door and asked to speak with him (R. 21, 22.) The agents were not in full uniform but in khakis and a polo. (R. 29.) The agents were carrying their handguns, but the weapons were never displayed in a threatening manner. Further, both agents were smaller than the defendant, who was taller and heavier than Agent Herman. (R. 29.) The agent’s strongest show of authority was raising their voice at the Defendant. Most importantly, the Defendant voluntarily exited his home and stepped outside after being asked by the agents.

If this Court decides to adopt the constructive entry doctrine, the Fourteenth Circuit’s decision should still be affirmed. Because the Defendant was not coerced outside of his home, his Fourth Amendment right was not violated under *Payton*.

In conclusion, because the law enforcement agents did not arrest the Defendant within his home and because the constructive entry doctrine is a legal fiction, the Defendant’s Fourth Amendment right was not violated. Therefore, the notebook seized incident to his arrest was properly admitted into evidence.

II. The Government did not violate the Fourth Amendment by searching a cardboard box inside the Defendant’s cabin because Agent Ristroph reasonably relied on Ms. Reiser’s consent.

The Fourteenth Circuit correctly affirmed the lower court’s admission of evidence seized from a cardboard box. The Fourth Amendment safeguards an individual’s right to be free from

unreasonable searches and seizures. U.S. Const. amend. IV. A warrantless search or seizure conducted within a home is generally presumed to be unreasonable and, therefore, a violation of the Fourth Amendment. *Payton v. New York*, 445 U.S. at 586-87. However, the government may rebut that presumption by demonstrating that it was acting pursuant to a third party's voluntary consent to search the premises.² *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). In the instant case, this Court should affirm the Fourteenth Circuit's conclusion that the admission of evidence seized from the cardboard box was proper for two reasons: (1) Ms. Reiser possessed apparent authority to consent to Agent Ristroph's search of the box, and (2) she did not limit the scope of her consent to exclude a search of the box.

When reviewing the lower court's ruling on a motion to suppress evidence, this Court should review factual findings for clear error and legal conclusions *de novo*. *United States v. Taylor*, 600 F.3d 678, 680 (6th Cir. 2010).

A. *Ms. Reiser possessed apparent authority over the cardboard box because it was located in a common area, and nothing alerted Agent Ristroph that the box belonged exclusively to the Defendant.*

Generally, a third party's consent to search property only extends to areas over which she possesses common authority. *United States v. Peyton*, 745 F.3d 546, 552 (D.C. Cir. 2014). An individual has common authority over an area or object she mutually uses, which is subject to the joint access or control of another. *Id.* Even in the absence of common authority, law enforcement may lawfully conduct a search of the premises based on the consenting party's apparent authority. *United States v. Taylor*, 600 F.3d at 681. Courts evaluate the presence of apparent authority under an objective standard, asking whether the facts available to the officer at the time

² The voluntariness of Ms. Reiser's consent was not at issue in the trial court or the Fourteenth Circuit. (R. 36.)

of the search would lead a reasonable person to believe that the consenting party had authority over the area searched. *Illinois v. Rodriguez*, 497 U.S. at 188.

When a party consents to the search of a room, that consent extends to containers within that space so long as a reasonable officer would understand the consent to include the container. *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000). In *Melgar*, police officers were searching for counterfeit checks and asked Rita Velasquez for permission to search a hotel room rented in her name, to which she agreed. *Id.* at 1039. During a search of the room, one officer discovered a purse containing a counterfeit check; it bore no personalized markings. *Id.* at 1040. Although the purse later proved to belong to someone other than Velasquez, the Seventh Circuit affirmed the district court's holding that the search was permissible because the officers had no reason to question Velasquez's authority over the purse. *Id.* at 1041.

In reaching that conclusion, the Seventh Circuit rejected the defendant-appellant's argument that officers must have positive knowledge that the container to be searched is under the consenting party's control. *Id.* Instead, the court emphasized the reasonableness of the officers' belief based on the circumstances available to them at the time of the search. *Id.* Specifically, the court relied on the facts that (1) the room was rented under Velasquez's (the consenting party) name and (2) there were no markings on the purse to reasonably raise officers' suspicion that it did not belong to Velasquez. *Id.* at 1041-42. Therefore, the court held that the consent to search the room included a right to search the purse. *Id.* at 1042.

Similarly, Agent Ristroph had no reason to question Ms. Reiser's authority over the box. The cardboard box, like the purse in *Melgar*, bore no identifying marks or labels indicating ownership. (R. 13-14.) Though the box was located on the very bottom of the staircase leading up to the loft, it was not among the Defendant's personal items, nor was it in the actual loft

space. (R. 13.) Instead, it was placed at the bottom of a staircase that opened to the cabin's living room—an area typically subject to the joint access and mutual control of cotenants. (R. 16, 17; *United States v. Whitfield*, 939 F.2d 1071, 1074-75 (D.C. Cir. 1991)). Because nothing indicated that the Defendant exercised exclusive control over the box, Agent Ristroph reasonably relied on Ms. Reiser's apparent authority to consent to its search.

The apparent authority doctrine will not justify a warrantless search when the surrounding circumstances would lead a reasonable person to doubt whether an object or area was under a consenting party's mutual control. *United States v. Taylor*, 600 F.3d at 681-82. In *Taylor*, the Sixth Circuit affirmed a lower court's suppression of evidence discovered in a shoebox located in the closet of a spare bedroom during a warrantless apartment search. *Id.* at 685. Although the officers obtained consent to search from the apartment's permanent tenant, the court held that the surrounding circumstances made it unreasonable for the officers to believe the shoebox fell within her authority. *Id.* at 682.

To reach this conclusion, the court relied on several objective facts: (1) the consenting tenant was a single woman with no children, (2) the defendant, a man, was found in the spare bedroom which he appeared to be occupying, (3) the bedroom was littered with men's clothing, (4) the closet held additional men's clothing and children's toys, and (5) the shoebox itself was labeled "men's basketball shoes" and was concealed beneath men's clothing. *Id.* at 681-82. Taken together, the Sixth Circuit determined that these facts indicated that the room was subject to another occupant's exclusive control, making it unreasonable for officers to believe the tenant had authority to consent to a search of the shoebox. *Id.* at 685.

The case before the Court is readily distinguishable from *Taylor*. Here, neither the location nor the appearance of the cardboard box would have caused a reasonable officer to

doubt Ms. Reiser's authority to consent to its search. Unlike the shoebox in *Taylor*, which was tucked in the corner of a closet inside a spare bedroom being used by a male occupant, the cardboard box sat openly at the bottom of a staircase in direct view of the living room. (R. 13, 16-17.) The cardboard box bore no labels or markings suggesting the Defendant's exclusive control, in contrast to the clearly labeled men's shoebox in *Taylor*. (R. 13.) The circumstances surrounding the cardboard box lacked any indication that it was under the Defendant's exclusive control, thereby confirming Agent Ristroph's reasonable belief that Ms. Reiser's consent included the box.

Because the facts available to Agent Ristroph would not have led a reasonable person to doubt Ms. Reiser's authority, Agent Ristroph justifiably relied on her consent to search the box. The lower court's dissent nevertheless argues that she limited the scope of that consent. That argument fails.

B. Ms. Reiser did not limit the scope of her consent to exclude Agent Ristroph from searching the cardboard box.

An individual who consents to the warrantless search of an area retains the ability to limit or expand the scope of that search. *United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002). Courts measure the scope of consent under an objective standard, asking what a reasonable person would have understood the consent to include. *Id.* Although a consenting party may expressly exclude particular areas or containers from a search, the Fourth Amendment does not require explicit authorization to search each container when a reasonable officer would understand the consent to include it. *Florida v. Jimeno*, 500 U.S. 248, 252 (1991).

In *Jimeno*, this Court reversed the suppression of evidence found in a paper bag inside the defendant's vehicle. *Id.* at 250. There, the defendant gave an officer general consent to search his car for narcotics. *Id.* During the search, the officer opened a folded paper bag found on the floor

of the passenger's side and discovered cocaine. *Id.* The defendant argued that the officer exceeded the scope of his consent because the officer did not obtain specific permission to search the containers in the defendant's car. *Id.* at 251. The Court rejected that argument, holding that a reasonable person would understand that consent to search for narcotics includes containers capable of concealing them. *Id.* The Court further declined to require explicit authorization to search a container when a reasonable person would understand that it falls within the scope of the consent already given. *Id.* at 252.

While the Fourteenth Circuit's dissent argues that Ms. Reiser limited the scope of her consent to exclude the cardboard box, the principle illustrated in *Jimeno* proves otherwise. After learning that only the Defendant used the second-floor loft space, Agent Ristroph confined his search of the cabin to the first floor. (R. 13.) Nothing about Ms. Reiser's words or conduct suggested that her consent excluded containers plainly visible and within reach of someone on the first floor, including the unmarked cardboard box sitting at the base of the staircase opening into a common area. (R. 13, 16-17.) Agent Ristroph remained within the reasonable scope of the first floor for the entirety of his search, and this Court has held that further authorization to search containers within that area is not required.

The lower courts properly determined that Ms. Reiser had apparent authority to consent to a search of the cardboard box, that her voluntary consent was not limited to exclude the box, and that evidence seized from the box was admissible. The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures, and Agent Ristroph acted as any reasonable officer would have given the facts available to him at the time of his search. As such, this Court should affirm the Fourteenth Circuit's decision.

III. Extrinsic evidence of Ms. Copperhead's prior misconduct was properly excluded because the plain language of Federal Rule of Evidence 806 forbids admitting extrinsic evidence of specific instances of conduct to impeach a hearsay declarant's credibility.

The Fourteenth Circuit correctly affirmed the district court's decision not to admit extrinsic evidence of Ms. Copperhead's prior academic violation and falsified job application to impeach Ms. Copperhead's credibility.

The standard of review of a district court's evidentiary rulings is abuse of discretion. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 138 (1997). The admissibility of extrinsic evidence to attack the credibility of a hearsay declarant is subject to the discretion of the trial judge. *United States v. Martz*, 964 F.2d 787, 789 (8th Cir. 1992); *United States v. Capozzi*, 883 F.2d 608, 615 (8th Cir. 1989), cert. denied, 495 U.S. 918 (1990).

Rule 806 of the Federal Rules of Evidence establishes the foundation to challenge the credibility of unavailable hearsay declarants. Fed. R. Evid. 806. However, Rule 608(b) governs impeachment mechanisms for attacking a witness's character for truthfulness. Fed. R. Evid. 608(b). The plain language of Rule 806 must be interpreted in conjunction with Rule 608(b) because Rule 806 only authorizes impeachment of a hearsay declarant, but Rule 608(b) establishes how to do so.

This Court has yet to address the intersection of Rule 806 and Rule 608(b), which has caused a circuit split. The First, Third, Fifth, Seventh, Fourteenth, and D.C. Circuits establish the majority approach. Several other district courts' decisions follow this approach as well, such as *United States v. Andrade*, 2025 WL 670456 (N.D. Cal., 2025) and *United States v. Little*, 2012 WL 2563796 (N.D. Cal., 2012). Conversely, only the Second Circuit constitutes the minority approach. *United States v. Friedman*, 854 F.2d 535 (2d Cir. 1988).

This Court should adopt the majority approach for three reasons. First, the district court—the court closest to the facts—is given wide discretion for evidentiary rulings, and it ruled extrinsic evidence of Ms. Copperhead's prior misconduct inadmissible. Second, the majority interprets Rule 806 in relation to 608(b). Lastly, the probative value of the extrinsic evidence of Ms. Copperhead's prior academic violation and falsified job application is substantially outweighed by the risk of distracting the jury from the central issues at hand and will undermine efficient trial administration. Therefore, this Court should affirm the lower court's decisions to exclude extrinsic evidence of Ms. Copperhead's prior academic violation and falsified job application to impeach her credibility.

A. This Court should adopt the majority approach and hold that Rule 806 does not override Rule 608(b)'s explicit ban on admitting extrinsic evidence offered to impeach Ms. Copperhead's character for truthfulness.

The majority of circuits follow *U.S. v. Saada*, 212 F.3d 210, 221 (3d Cir. 2000). In *Saada*, the Third Circuit held that even if a hearsay declarant is unavailable, Rule 608(b)'s explicit ban of extrinsic evidence of specific instances of prior conduct is not altered by Rule 806. *Id.* There, defendants were charged with insurance fraud after they staged a flood in order to file an insurance claim. *Id.* at 214. At trial, a witness testified that she heard a former officer of the business screaming that the defendants had done “something stupid,” with the implication that the “something stupid” was the staged flooding. *Id.* at 218-19. Because the former officer was deceased at the time of trial, the government introduced extrinsic evidence, over the defense's objection, of the former officer's previous misconduct in order to undermine his credibility. *Id.* at 219. On appeal, the Third Circuit concluded that the admission of extrinsic evidence was improper because it was based on a wrong interpretation of Rules 806 and 608(b);

the correct interpretation was that Rule 608's ban on extrinsic evidence of misconduct applies in the context of hearsay declarants, like the former officer. *Id.*

Conversely, the minority approach relies on a footnote found in *United States v. Friedman*, 854 F.2d 535 (2d Cir. 1988). The footnote provides, "[R]ule 806 applies, of course, 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." *Id.* at 570 n. 8. Despite the erroneous footnote, the Second Circuit held that the trial court properly excluded impeachment evidence of the hearsay declarants lying to the police because the evidence was not probative of the truthfulness of the challenged hearsay statement. *Id.* at 569–70. Further, the court suggested that if the misconduct had been probative of truthfulness, extrinsic evidence of the hearsay declarant's lie would have been admissible. *Id.* at 570.

However, the inability to cross-examine a hearsay declarant does not justify abandoning the plain language of the Federal Rules of Evidence because there are alternative impeachment methods. Where a hearsay declarant's credibility may not be impeached with extrinsic evidence of specific instances of prior misconduct, there are other ways to impeach the hearsay statement, such as opinion and reputation evidence of character for truthfulness under Rule 608(a), evidence of criminal convictions under Rule 609, and evidence of prior inconsistent statements under Rule 613.

B. The plain language of Rule 806 must be interpreted in conjunction with Rule 608(b) because Rule 806 only authorizes impeachment of a hearsay declarant, not a method in which to do so.

The Federal Rules of Evidence are congressional enactments and, therefore, are subject to the same interpretation method as statutes. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 163 (1988). This Court uses the plain meaning of the text to interpret the Rules of Evidence.

Id. Moreover, this Court interprets the Rules together, rather than in isolation from one another. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Rule 806 provides, “[W]hen a hearsay statement...has been admitted in evidence, the declarant’s credibility may be attacked...by any evidence that would be admissible for those purposes if the declarant had testified as a witness.” Fed. R. Evid. 806. The advisory committee notes make it clear that, for the purposes of impeachment, hearsay declarants are treated as testifying witnesses. *U.S. v. Moody*, 903 F.2d 321, 328 (5th Cir. 1990).

Therefore, hearsay declarants are subject to impeachment in the same manner and to the same extent that would be admissible under the Rules for a testifying witness in court. *Id.* Accordingly, Rule 806 does not create new methods of impeachment nor expand the scope of impeachment under preexisting rules.

For example, in *U.S. v. Finley*, the court held that Rule 806 allows hearsay declarants to be impeached but does not “obliterate the rules of evidence that govern how impeachment is to proceed.” 934 F.2d 837, 839 (7th Cir.1991). The court further discussed that because Rule 806 limits impeachment to only what “would be admissible for those purposes if the declarant had testified as a witness,” that all of the other evidence rules remain in force. Fed. R. Evid. 806. *Id.*

Rule 608(b) establishes that "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." Fed. R. Evid. 608(b). However, "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." Fed. R. Evid. 608(b). Regardless of a hearsay declarant's unavailability,

extrinsic evidence of her prior misconduct is inadmissible at trial because of the plain language of Rule 608(b).

For example, in *U.S. v. Saada*, the Third Circuit interpreted Rule 806 in conjunction with Rule 608(b) by meshing the rules together. The court provided, "Rule 806 allows impeachment of a hearsay declarant only to the extent that impeachment would be permissible had the declarant testified as a witness, which, in the case of specific instances of misconduct, is limited to cross-examination under Rule 608(b)." *Id.* The court reasoned that they arrived at their conclusion by referencing "the plain—albeit imperfectly meshed—language of Rules 806 and 608(b)." *Id.* Moreover, in *Saada*, the court noted that Rule 806's silence on the admissibility of extrinsic evidence shows that the omission was deliberate. *Id.* at 222. Further, the court distinguished the fact that Rule 613 provides express authorization of such evidence to prove prior inconsistent statements. *Id.* The Fourteenth Circuit in the instant case followed the *Saada* approach. (R. 57.)

C. The probative value of the extrinsic evidence of Ms. Copperhead's prior misconduct is outweighed by its danger of distracting the jury from the central issues at hand and will undermine efficient trial administration.

Because of the substantial danger of distracting the jury from the issue at hand and undermining efficient trial administration, extrinsic evidence of Ms. Copperhead's prior misconduct should be excluded.

Rule 403 provides, "[T]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

Further, Rule 403 allows a district court to “exclude collateral matters that are likely to confuse the issues.” *United States v. Casoni*, 950 F.2d 893, 919 (3d Cir. 1991). Such collateral matters are “factually unrelated to [the] case.” *Id.* For example, in *United States v. Martz*, the court noted that the prohibition of admitting extrinsic evidence of specific instances of conduct is to avoid conducting mini-trials on collateral matters. 964 F.2d 787, 789 (8th Cir. 1992); *Carter v. Hewitt*, 617 F.2d 961, 971 (3d Cir. 1980) (citing 3A *Wigmore on Evidence*, § 979 at 826-27 (Chadbourn rev. ed. 1970)). Further, in *U.S. v. Moody*, the court stated that Rule 806 does not create an invitation for “the defense to revisit, ad nauseam, the sordid history of the hearsay declarants in order to disparage their credibility.” 903 F.2d at 329 (1990).

In the instant case, allowing extrinsic evidence of Ms. Copperhead’s prior misconduct would create a mini-trial, just like the court in *Martz* described. (R. 58.) Ms. Copperhead's prior academic violation and falsified job application are unrelated to the case; therefore, they are both collateral. Although the Fourteenth Circuit stated that Ms. Copperhead’s hearsay statement was important to the government's case, it is substantially outweighed by its danger of distracting the jury from the central issues at hand and will undermine efficient trial administration. (R. 58.) Allowing such evidence would waste the court’s time. Because the district court –the court closest to the facts– has already excluded Ms. Copperhead's prior academic violation and falsified job application, this Court should affirm its decision. (R. 58.)

CONCLUSION

For the foregoing reasons, this Court should affirm the Fourteenth Circuit’s decision and find that (1) the Defendant’s arrest was valid and his Fourth Amendment rights were not violated under *Payton v. New York*, (2) it was proper for the law enforcement agent to search the

cardboard box because he was operating under a co-occupant's apparent authority to consent, and (3) it was proper to exclude the extrinsic evidence to impeach an unavailable declarant.

Respectfully submitted,

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