No. 25-7373

IN THE

SUPREME COURT OF THE UNITED STATES

March Term 2026

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari

To The United States Court of Appeals

For the Fourteenth Circuit

BRIEF FOR THE RESPONDENT

Counsel for Respondent

QUESTIONS PRESENTED

I. Whether officers violate the Fourth Amendment when they effectuate an arrest only after, the suspect has voluntarily stepped outside his home and where officers remain outside during the entirety of the interaction under *Payton v. New York*.

II. Whether the Fourth Amendment requires law enforcement officers to resolve ambiguous ownership of a closed container in a shared residence before searching the container pursuant to a co-occupant's voluntary consent.

III. Whether Rule 806 overrides Rule 608(b)'s categorical bar on extrinsic evidence of specific instances of untruthful conduct when a hearsay declarant is unavailable to testify.

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OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia denying Hemlock's motions to suppress physical evidence and excluding extrinsic impeachment evidence appears on pages 53 and 54 of the record. Following a jury trial, the district court entered judgment of conviction against Petitioner Atticus Hemlock.

The judgment of the United States Court of Appeals for the Fourteenth Circuit is reported at ___ F.4th ___ (14th Cir. 2025) and it appears on pages 51-61 of the record. The court of appeals affirmed petitioner's conviction, holding that: (1) petitioner's warrantless arrest did not violate the Fourth Amendment because law enforcement officers remained outside the home and arrested petitioner only after he exited the residence; (2) evidence recovered from a closed container in petitioner's shared residence was admissible because officers reasonably relied on a co-occupant's apparent authority to consent to the search; and (3) extrinsic evidence of a hearsay declarant's prior misconduct was properly excluded because Federal Rule of Evidence 806 does not override Rule 608(b)'s prohibition on extrinsic character impeachment.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourteenth Circuit entered final judgment affirming petitioner's conviction on April 14, 2025. R.51. Petitioner thereafter sought review in this Court, and this Court granted the petition for a writ of certiorari on December 2, 2025. R.62. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, 18 U.S. Code § 3052 and Rules 608(b) and 806 of the Federal Rules of Evidence are relevant to this appeal.

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 person or things to be seized.

U.S. Const. Amend. IV.

18 U.S. Code § 3052 – Powers of Federal Bureau of Investigation states:

> The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

STATEMENT OF THE CASE

I. Statement of Facts

A. A Kidnapping Plot

In March 2024, federal authorities began receiving separate reports that pointed to a troubling possibility: Atticus Hemlock ("Hemlock") may have been involved in planning the kidnapping of a federal official. R. at 6–7. One report came from an unlikely source. A local barista told authorities that he had overheard Hemlock and Iris Copperhead ("Copperhead") discussing a plan to "nab Jodie"—a reference to Jodie Wildrose ("Wildrose"), the United States

Under Secretary for Rural Development, who was scheduled to visit Boerum Village in early April. R. at 8. The conversation included specific references to abducting Wildrose from a parking lot and hiding her afterward. Id. After the encounter, the barista identified both Hemlock and Copperhead using publicly available social media photographs. R. at 7.

Two days later, law enforcement received a second report from a superstore manager. R. at 6. The manager explained that Copperhead had purchased a combination of items that raised immediate concern: zip ties, ski masks, trash bags, a folding knife, and bear spray. Id. Copperhead paid in cash and appeared visibly nervous during the transaction. Id. Taken together, the items and Copperhead's demeanor prompted the manager to contact authorities. Id.

Federal investigators determined that these independent reports warranted further investigation, though they initially concluded that the information did not yet establish probable cause for an arrest. R. at 8.

B. Federal Agents Assess the Threat

On April 2, 2024, FBI Special Agents Hugo Herman and Ava Simonson traveled to Hemlock's rural cabin to conduct a voluntary interview to aide in their investigation. R. at 22. The agents did not have an intention to arrest Hemlock and remained outside the residence at all times. Id.

The agents wore black t-shirts and khaki pants, and their weapons remained securely holstered throughout the entirety of their interaction with Hemlock. Id at 29. Hemlock came to the doorway and spoke with the agents through a screen door. R. at 21. During the exchange, Agent Herman observed two bottles inside the cabin bearing the label "chloroform." R. at 11.

When the agent asked about the bottles, Hemlock attempted to block the agents' view. Id. Hemlock then asked whether the agents were there because of "Jodie." Id.

In light of the chloroform observed in plain view, Hemlock's effort to conceal it, and his unsolicited reference to the federal official discussed in prior reports, the agents concluded that probable cause existed to arrest Hemlock for his role in an attempted kidnapping plot. R. at 22.

The agents asked Hemlock to step outside the cabin. R. at 12. Hemlock exited the residence. Id. Once he was outside the home, the agents placed him under arrest. Id. At no point did the agents enter the cabin. Id.

C. An Arrest Reveals a Kidnapping Plan and a Voluntary Search Reveals Additional Evidence

During a search incident to arrest, agents recovered a spiral notebook from Hemlock's pocket. R. at 23. The notebook contained a detailed written plan describing how to abduct Under Secretary Wildrose during her upcoming visit. R. at 24.

Later that day, FBI Agent Kiernan Ristroph remained at the cabin to await the return of Fiona Reiser, Hemlock's girlfriend and co-occupant. R. at 13. When Reiser arrived, Ristroph informed her of Hemlock's arrest and asked for permission to search the cabin. Id. Reiser voluntarily consented. Id.

Reiser explained that she and Hemlock shared the bedroom on the first floor, but that the loft was used primarily by Hemlock for storage and as an office, and that she rarely went upstairs. R. at 15. Agent Ristroph did not enter the loft. Id.

While searching the first floor living area, Ristroph noticed a closed, unlabeled cardboard box positioned on the stairs leading up to the loft. R. at 13. The box bore no identifying marks and gave no outward indication of exclusive ownership. Id. Without objection from Reiser, Ristroph opened the box and found rope, zip ties, ski masks, duct tape, a knife, and chloroform. R. at 13–14.

Shortly after witnessing Hemlock's arrest, Copperhead fled through a nearby park in an agitated state. R. at 42. She encountered a passerby, Theodore Kolber, and exclaimed, "It's all his fault. It was all Atticus' idea—not mine!" R. at 43. Copperhead appeared visibly distressed when she made the statement. Id.

Copperhead was arrested later that evening. She died in custody the same night and never testified at trial. R. at 46.

II. Procedural History

A federal grand jury indicted Hemlock on charges arising from the attempted kidnapping of a federal official. R. at 1-2.

Prior to trial, Hemlock moved to suppress the spiral notebook recovered during his arrest, and the contents of the cardboard box recovered during the consent search of the cabin. R. at 18-19. He also moved to admit extrinsic impeachment evidence regarding Copperhead's credibility. R. at 47. At trial, the government introduced Copperhead's statement through Kolber as an excited utterance. R. at 43. The defense sought to impeach Copperhead's credibility by introducing extrinsic evidence of two prior incidents: a formal academic integrity violation for fabricating sources and misusing artificial intelligence, and a job application in which

Copperhead falsely claimed to have earned a college degree. R. at 47-49. The district court denied the motions to suppress and excluded the impeachment evidence. R. at 39.

Following a jury trial, Hemlock was convicted on all counts. R. at 23.

Hemlock appealed. On April 14, 2025, the United States Court of Appeals for the Fourteenth Circuit affirmed the judgment of conviction, holding that: (1) Hemlock's arrest outside his home did not violate the Fourth Amendment; (2) the search of the cardboard box was valid based on a co-occupant's apparent authority to consent; and (3) the exclusion of extrinsic impeachment evidence was proper under the Federal Rules of Evidence. R. at 51–58.

This Court granted certiorari on December 2, 2025. R. at 62.

SUMMARY OF THE ARGUMENT

This case presents three settled questions of constitutional and evidentiary law, each of which the Fourteenth Circuit correctly resolved in accordance with this Court's precedent.

First, Hemlock's Fourth Amendment challenge to his arrest fails because law enforcement officers never crossed the threshold to his home, and the arrest was conducted in a public place. It is well established by this Court that arrests made in public places based on probable cause are constitutional. *Payton v. New York*, 445 U.S. 573, 590 (1980); *United States v. Watson*, 423 U.S. 411, 423–24 (1976). Hemlock's proposed "constructive entry" theory finds no support in this Court's decisions. Rather, the theory threatens to undermine *Payton's* bright-line rule by replacing it with a subjective inquiry into perceived coercion. A result inconsistent with the Fourth Amendment's preference for clear, administrable boundaries.

Second, the warrantless search of the closed container was reasonable under this Court's apparent authority doctrine. This Court does not require officers to resolve every ambiguity about ownership before acting on a co-occupant's voluntary consent. A co-occupant voluntarily consented to a search of the box within a *shared* residence. Officers reasonably believed that the consent extended to an unlabeled container located in a common area. Under *Illinois v. Rodriguez*, the Fourth Amendment is satisfied when officers reasonably rely on apparent authority, even if that belief later proves mistaken. *Illinois v.* Rodriguez, 497 U.S. 177, 188–89 (1990). The court of appeals correctly applied this objective reasonableness standard.

Third, the district court properly excluded extrinsic evidence offered to impeach the credibility of a hearsay declarant. Rule 806 allows a defendant to attack a hearsay declarant's credibility only by methods otherwise permitted under the Federal Rules of Evidence. Rule 608(b) expressly bars the use of extrinsic evidence to prove specific instances of untruthful conduct. This Court recognized this limitation as essential to avoid collateral mini-trials and jury distraction. See *United States v. Abel*, 469 U.S. 45, 54–55 (1984). Reading Rule 806 to override Rule 608(b) would elevate hearsay declarants to a more vulnerable status than live witnesses and would disrupt the Rules' carefully calibrated balance.

In each respect, Hemlock urges this Court to abandon settled doctrine in favor of novel theories that would blur constitutional lines and weaken the Federal Rules of Evidence. The Fourth Amendment and the Rules do not permit such a departure. The judgment below should be affirmed.

ARGUMENT

I. HEMLOCK'S ARREST DID NOT VIOLATE THE FOURTH AMENDMENT BECAUSE THE ARREST WAS REASONABLE AND THEREFORE, THE NOTEBOOK SEIZED INCIDENT TO HIS ARREST WAS PROPERLY ADMITTED.

The Fourth Amendment does not prohibit all seizures but rather only "unreasonable seizures" of "persons". U.S. Const. amend. IV. A seizure of a person occurs when the government materially interferes with a person's interest in being free from physical disruption and inconvenience. *Torres v. Madrid,* 592 U.S. 306, 309 (2021). Therefore, a seizure occurs when a person is arrested.

In order, for an arrest to comply with the Fourth Amendment it must be reasonable. This Court in *Watson* established that a warrantless arrest in public could overcome the unreasonable presumption if the arrest was based on probable cause or if a felony was committed in the presence of an officer. *See generally Watson*, 423 U.S. 411. Probable cause is not an issue in this appeal, as Hemlock is not contesting that the officers lacked probable cause to arrest. R. at 53 n.1. 18 U.S. Code § 3052, outlines the powers granted to federal agents to make arrests without warrants for any offenses committed in their presence or for any felony if they have reasonable grounds to believe that the person arrested is committing such a felony.

In line with common law principles and history, this Court in *Payton* laid out the fundamental principle that seizures *inside* a home without a warrant are presumptively unreasonable. *Payton,* 445 U.S. at 586 (*emphasis added*). The operative word in *Payton* is inside. This clear delineation has been established and reinforced by this Court repeatedly. Recognizing that warrantless arrests inside the home are the chief evil, it would be a gross mischaracterization of the Fourth Amendment to extend its protections outside the home. *Id*.

a. Hemlock was arrested in public beyond the bright, firm-line rule drawn by *Payton v. New York* and therefore his arrest was reasonable under the Fourth Amendment.

It is well-established that the *Payton* rule is only applicable to arrests made inside the home, with the firm, bright-line rule being at the entrance to the home. *Payton,* 445 U.S. at 573. The plain language of the *Payton* decision itself proves this assertion, but this Court has consistently reaffirmed it. *See New York v. Harris*, 495 U.S. 14, 18 (1980) ("*Payton* nevertheless drew a line at the entrance to the home."); *Steagald v. United States*, 451 U.S. 204, 212 (1981) ("The Fourth Amendment has drawn a firm line at the entrance to the house"); *Kirk v. Louisiana*, 536 U.S. 635 "(2002) ("The firm line at the entrance to the house"). Under the *Payton* rule, law enforcement officers are prohibited from making warrantless and nonconsensual entries into a suspect's home to make a routine felony arrest. *Payton,* 445 U.S. at 586. Since Hemlock was arrested in public, the protections afforded under *Payton* are inapplicable.

The Fourth Amendment has drawn a firm line at the entrance to a home. *Id.* That threshold may not be reasonably crossed without a warrant. *Id.* In *Payton*, officers went to Payton's residence with the intent to arrest him but failed to obtain a warrant. After knocking with no avail, officers then preceded to use crowbars to break open the residence door and enter. Additionally, in *Riddick* which was also analyzed in the *Payton* decision, law enforcement officers entered the home to effectuate an arrest when his young son opened the door and they could see Riddick. *Payton,* 445 U.S. at 578. Both times law enforcement officers went to a suspect's home without a warrant with the intention to arrest and physically crossed the threshold of the home.

Following the *Payton* decision and its progeny, it is clear that Special Agents Herman and Simonson did not violate Hemlock's Fourth Amendment rights under *Payton*. First, they did not

go to Hemlock's home with the intention to arrest him and second, they never crossed the threshold of his home. On direct examination, Herman said that both himself and Simonson went to Hemlock's home with the intention of getting answers to some questions, not with the intention to arrest. R. at 21. This is distinct from the cases in which officers clearly violate a suspect's Fourth Amendment rights by intending to effectuate an arrest in the home with intentional disregard to the warrant requirement. *See Payton* 445 U.S. at 570. It is also critical to this analysis since it indicates why Herman and Simonson did not have an arrest warrant to begin with.

Here, both Special Agents were engaging in routine investigation to get more information. Under the Fourth Amendment, officers are allowed to investigate without obtaining a warrant. Even more importantly, once Herman and Simonson did have probable cause to arrest Hemlock, which is not an issue on this appeal, they did not effectuate an unconstitutional arrest by crossing the threshold of his home as required by *Payton*. R. at 31. Rather, the Special Agents arrested Hemlock once he was off the bottom of his steps on the public ground outside the threshold of his home. R. at 23.

If this Court allows the *Payton* rule to extend further than the threshold of the home, then there is risk that Fourth Amendment protections, rather than being strengthened, will be diluted. Respondent acknowledges and supports that *Payton* protections are critical to privacy and liberty, but extending *Payton* beyond the bright-line threshold of the entrance of the home threatens the balance that the Fourth Amendment requires. Here, Special Agents Herman and Simonson did not seek Hemlock with the intention to arrest and further never crossed the

threshold of his home to effectuate an arrest. Therefore, under *Payton* Hemlock's arrest was constitutional, and the evidence seized was properly admitted.

b. This Court should affirm the Fourteenth Circuit Court's decision to decline to recognize the "Constructive Entry Doctrine" as it fundamentally conflicts with Fourth Amendment jurisprudence.

Hemlock relies on the legal theory of constructive entry to assert that his Fourth Amendment rights were violated under *Payton*. This Court should follow the Fourteenth Circuit's decision to decline to recognize the constructive entry doctrine as it jeopardizes clear, administrable boundaries and the balance that is required of the Fourth Amendment between suspects and law enforcement. The Second, Fifth, Seventh, and Eleventh Circuits have all correctly declined to adopt the constructive entry doctrine recognizing that it is "conceptually muddled" and "beset with practical problems." *United States v. Allen*, 813 F.3d 76, 88 (2d. Cir. 2016). See *Knight v. Jacobson*, 300 F.3d 1272 (11th Cir. 2002); *United States v. Berkwitz*, 927 F.2d 1376 (7th Cir. 1991); United States v. Carrion, 809 F.2d 1120, 1128 (5th Cir. 1987); *Gaddis v. DeMattei*, 30 F.4th 625 (7th Cir. 2022). Rather, this Court should follow these courts that take a narrow, literal approach to the *Payton* rule. Within these circuits, a *Payton* violation occurs if there is a physical trespass into the home. This literal reading of the rule allows for clarity and uniformity.

Additionally, courts that do accept the constructive entry doctrine hold divergent views on the circumstances under which the doctrine applies. Steven B. Dow, Muddling Through the Problem of Constructive Entry: Comments on *United States v. Allen*, 813 F.3d 76 (2d Cir. 2016), and Warrantless Doorway Arrests, 79 Mich. L. Rev. 243, 253 (2017). This further reinforces the lack of clarity and instruction within the doctrine highlighting the danger it poses to Fourth Amendment guidance. The Seventh circuit, in a similar case, refused to recognize the

constructive entry doctrine and opted for a narrow, literal view of *Payton*. *Gaddis*, 30 F.4th at 630. In *Gaddis*, the suspect opened his front door and walked out onto his porch before being officially placed under arrest. *Id.* The Seventh circuit correctly held that he was unable to establish a literal violation of *Payton*. *Id* at 631. Similarly, here, Hemlock, as previously discussed, is unable to prove a literal violation of *Payton* since he was arrested outside of the threshold of his home.

The Eleventh circuit also took a narrow reading of *Payton*, refusing to extend it. *Knight,* 300 F.3d 1272. There, the court reasoned that since the suspect was not arrested inside his home, but just outside the door of it, *Payton* was not implicated. Further, the *Knight* court found that *Payton* keeps the "officer's body outside the threshold, not his voice" *Id* at 1277. Therefore, an officer instructing a suspect to step outside his home does not implicate *Payton*. Here, agents Herman and Simonson never *physically* stepped into Hemlock's home. Instead, they only told Hemlock to come outside. Again, *Payton* keeps the officers bodies outside the threshold, not their voices.

Reading *Payton* in a narrow view to include only the bright, firm line drawn at the entrance to the house best aligns with the history and tradition of the Fourth Amendment as well as this Court's precedent. A narrow view of the rule reenforces the historical tradition in upholding the sanctity of the home. By extending the reach of *Payton* through the constructive entry doctrine, courts are diluting the importance of the *Payton* rule. This would cause confusion and practical problems within police practices creating uncertainty regarding where the line is drawn regarding *Payton* violations. Rather than protecting the Fourth Amendment, the constructive entry doctrine blurs the line of where constitutional protections begin and end.

c. Even if this Court does decide to recognize the "Constructive Entry Doctrine", this case would be an insufficient vehicle to do so since Hemlock's arrest would still be constitutional as the Government did not coerce Hemlock to exit his home, instead he exited due to his own volition.

If this Court were to decide to recognize the Constructive Entry Doctrine, despite its insufficiencies, Hemlock's arrest would still be constitutional under the Fourth Amendment. An arrest is effectuated either through physical force or submission to the assertion of authority. *California v. Hodari D*, 499 U.S. 621, 627 (1991). The constructive entry doctrine relies on the submission of a suspect to the assertion of authority to effectuate an invalid arrest. Therefore, under the constructive entry doctrine, coercion would need to take place. This Court has found that submission to the assertion of authority occurs only if, under a totality of the circumstances, a reasonable person would not feel free to leave. *United States v. Mendenhall*, 446 U.S. 544 (1980). These circumstances include the threatening presence of several officers surrounding the home, weapons drawn, use of language and tone. *United States v. Morgan,* 743 F.2d 1158, 1163 (6th Cir. 1984). None of these circumstances occurred during Hemlock's arrest and therefore even under the constructive entry doctrine there was no coercion by Herman and Simonson that would have violated Hemlocks Fourth Amendment rights.

Looking to the circuits that have accepted the constructive entry doctrine, this case does not amount to the level of coercion used in those cases. The Sixth Circuit in *Morgan* found that an unconstitutional arrest occurred when officers surrounded a suspect's house, flooded it with spotlights, and summoned the suspect with a bullhorn. *Morgan,* 743 F.2d at 1163. Similarly, again the Sixth Circuit found a constitutional violation where four officers positioned themselves in front of a door with guns drawn. *United States v. Saari*, 272 F.3d 804, 808 (6th Cir. 2001).

These circumstances starkly differ from Hemlock's situation. Before exiting his home, Hemlock was not summoned with a bullhorn or surrounded by an excessive show of police presence flooding his cabin with spotlights. Rather, there were only two Agents, dressed in khakis and black t-shirts speaking to Hemlock. There is no evidence that weapons were ever drawn, and no threating orders were ever shouted. R. at 29, 30. At no point did Hemlock not feel free to leave. Hemlock voluntarily exited his home and walked down his front doorsteps into the public where he was subsequently arrested. Id.

Viewing the facts in the light most favorable to Hemlock, there is no factual evidence that the circumstances created by Herman and Simonson amounted to coercion that would trigger a constitutional violation under a constructive entry theory. Even if this Court were to recognize the constructive entry doctrine this case would be an insufficient vehicle to do so, as even under such a doctrine, Hemlock's Fourth Amendment rights were not violated and thus the evidence obtained is not subject to the exclusionary rule.

II. THE EVIDENCE SEIZED DURING THE CONSENTED SEARCH OF HEMLOCK'S SHARED SPACE DID NOT VIOLATE THE FOURTH AMENDMENT BECAUSE A CO-HABITANT GAVE CONSENT TO THE SEARCH WHICH INCLUDED THE BOX PLACED IN A SHARED AREA.

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. It is a basic principle that a warrantless search inside a home is presumptively unreasonable, and any evidence recovered as a fruit of that illegal search is inadmissible and must be suppressed. *Katz v. United States*, 389 U.S. 347 (1967). But this presumption can be overcome if an exception applies to which the warrantless search is constitutionally permitted. *United States v. Bell*, 500 F.3d 609, 612 (7th Cir. 2007).

One exception is when an authorized individual voluntarily consents to the search. The burden is on the government to establish the consent of the search. *U.S. v. Arreguin*, 735 F.3d 1168, 1174 (9th Cir. 2013). The government can meet its burden by demonstrating that: (1) a third party had shared use and joint access to or control over a searched area; or (2) the owner of the property to be searched has expressly authorized a third party to give consent to the search. *Id*. If there is no proof of a party's actual authority, then the government may establish consent through the apparent authority doctrine. *Id* at 1175.

A search may still be constitutionally valid if the government can prove that under the apparent authority doctrine the officer who conducted the search reasonably believed that the person from whom they obtained the consent had the actual authority to grant that consent. *Rodriguez*, 497 U.S. at 179. This is based on an objective standard of reasonableness and considers the totality of the circumstances. *United States v. Ruiz*, 428 F.3d 877, 881 (9th Cir. 2005).

This doctrine follows the history and tradition of Fourth Amendment jurisprudence to focus on objective reasonableness. This ensures uniformity and practicality in considering the rapidly changing circumstances that law enforcement encounters daily. Here, the government has met its burden to show that consent was given to Agent Ristroph by Reiser. Therefore, the search of the undescriptive carboard box located in a shared space was constitutionally permissible, and its contents were properly admitted.

a. Reiser as a co-inhabitant to the cabin had common authority over the shared space which included the box.

The voluntary consent of any joint occupant of a residence to search the premises jointly occupied is valid. *United States v. Matlock*, 415 U.S. 164, 170-172 (1974). Therefore, the consent of one person who possesses common authority over the premises is valid as against the absent, nonconsenting person with whom authority is shared. *Id*. Common authority rests on mutual use of the property by persons having joint access or control. *Id.*

The Second Circuit analyzed whether an officer could reasonably believe a third-party had the authority to consent to a search. The court noted factors such as the officer's knowledge that the couple were not married, maintained separate residences and at the most occasionally spend the night at each other's residence. *Koch v. Town of Brattleboro, Vermont,* 287 F.3d 162,167 (2nd Cir. 2002). Those facts taken in totality of circumstances suggest that the officer could not reasonably have believed that the third-party had mutual use or joint access or control of the property.

Here, Reiser and Hemlock shared the cabin as their primary residence for the past 3 years. R. at 15. Unlike the third-party in *Koch*, Reiser lived with Hemlock and therefore had mutual use and joint access to the property. Reiser notes that the upstairs was limited to Hemlock's belongings which prompted Ristroph to not go up the stairs to the loft. The stairs in the common area of the room were in control of Reiser and therefore she could consent to a search of the entirety of the first floor. The cardboard box was found on the first floor. Therefore, Reiser had common authority over the box and could consent to its search.

b. Even if this Court were to find that Reiser did not have common authority over the box in the shared space, the evidence seized would still be admissible because she had apparent authority to consent to the search.

Even if this court were to determine that Reiser did not in fact have actual authority to give consent to the search, the search is still valid as Agent Ristroph reasonably believed that Reiser had authority to consent. The Fourth Amendment does not assure that no government search of a home will occur unless the individual consents, but rather that no search is "unreasonable". *Rodriguez*, 497 U.S. at 183. Under the apparent authority doctrine, if law enforcement rely in good faith on a third-party's actual or apparent authority to consent to the search then the Fourth Amendment is not violated. *Id*.

i. It was objectively reasonable for Agent Ristroph to conclude that Reiser had authority to consent to a general search of the lower level of the cabin.

In determining the scope of the third parties consent, law enforcement officers cannot unreasonably extend it. The search cannot be automatically extended to the interiors of every discrete enclosed space capable of search. *United States v. Block*, 590 F.2d 535, 541 (4th Cir. 1978). *United States v. Gillis*, 358 F.3d 386, 391 (6th Cir. 2004).

The Government acknowledges that co-residents may have privacy interests in specific property and places within the residence that cannot be waived by a third party, but that is not the case here. Had the box been in the loft, then that argument would have weight, and the search of that room would have been an unreasonable expansion of the search. Since the box was located on the first floor of the cabin with no identification that it belonged to Hemlock, it was within the area that Reiser consented to the search. The box was located on the steps of the first floor. Since Reiser and Hemlock shared the space on the first floor, the box was within a reasonable area to

be searched. Ristroph did not unreasonably extend the search to include areas of the cabin that were in exclusive control of Hemlock. Therefore, it was objectively reasonable for Ristroph to conclude that Reiser had the authority to consent to a general search of the first floor.

ii. It was objectively reasonable for Agent Ristroph to conclude that Reiser had authority to consent to a search of the undescriptive cardboard box located on the lower level of the cabin.

In relation to closed containers, apparent authority turns on the government's knowledge of the third party's use of, control over, and access to the container to be searched. *United States v.* Basinski, 226 F.3d 829, 834 (7th Cir. 2000). These factors are probative of whether the individual has authority over the property. But if the "third-party consent would reasonably be understood to extend to a particular container, then the Fourth Amendment provides no grounds for requiring a more explicit authorization". *Florida v. Jimeno*, 500 U.S. 248, 252 (1991). Further, once consent is obtained, closed container searches are permissible if law enforcement does not have reliable information that the container is not under the authorizer's control. *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000).

The cases on which Hemlock is likely to rely on to argue that there is a lack of apparent authority by Reiser to the cardboard box on the first floor are easily distinguishable. The First Circuit found no apparent authority when a third-party consented to a general search of a car but told officers *explicitly* that he had no authority over a briefcase that was in the *locked* in the trunk of the car that belonged to defendant. *United States v. Infante-Ruiz,* 13 F.3d 498, 505 (1st Cir. 1994) (emphasis added). The Fourth Circuit in *Block* found no apparent authority when law enforcement officers were specifically confronted with a secured container that required force to open. The third-party asserted the defendants' claim of privacy over the secured container and

explicitly disclaimed any shared rights to the container. *United States v. Block,* 590 F.2d 5535, 541 (4th Cir. 1978). These cases explicitly show that when a third-party provides reliable information that the container is not under the third-party's control, then apparent authority does not exist.

The Seventh Circuit in *Basinski*, laid out factors that a court can consider when analyzing if a closed container can be reasonably searched with the consent of a third party. *Basinski*, 226 F.3d at 834. First is the nature of the container. It is less reasonable for an officer to believe that a third party had full access to a defendant's purse or briefcase. The court also looked to the external markings on the container such as the defendant's name in order to gauge the reasonableness of an officer's belief. Lastly, the court looks at the defendants' efforts to lock the container.

Using the factors discussed in *Basinski*, it is clear that Ristroph could reasonably believe that Reiser had authority to consent to the search. The carboard box was not a briefcase, suitcase or trunk that had indicated any particular possession, but rather it was nondescript. Further, there was no indication that there was any expectation of privacy to it. There was no indication of any efforts taken to close the box securely, either by taping it or writing on the box "Do Not Open". Nothing on the box indicated that it was Hemlock's or that it was private. Further, Reiser did not explicitly disclaim any shared right to the box. Therefore, Ristroph did not have any reliable information that the box was not under Reiser's control and needed explicit consent. Under a totality of the circumstances, it is reasonable that Agent Ristroph concluded that the cardboard box was within Reiser's apparent authority and therefore able to be searched.

In order to challenge this presumptive reasonableness of the consent search, Hemlock would need to have credible evidence that the cardboard box was obviously and exclusively his. *United States v. Snype,* 441 F.3d 119, 136 (2d Cir. 2006). There is nothing in the record that would support this challenge. Rather, the record shows evidence that the box could reasonably be inferred to be Resier's. Therefore, Agent Ristroph's search of the cardboard box was not in violation of Hemlock's Fourth Amendment rights under the apparent authority doctrine. The box was located in a shared area of the residence, Reiser took no affirmative steps to disclaim ownership of it and Hemlock failed to effectively secure it. Since Hemlock is unable to have credible evidence that the cardboard box was obviously and exclusively his, he is unable to challenge the presumptive reasonableness of the search.

III. THE FOURTEENTH CIRCUIT FAITHFULLY APPLIED RULES 806 AND 608(b), AND THEREFORE, PROPERLY EXCLUDED EXTRINSIC IMPEACHMENT EVIDENCE

The Federal Rules of Evidence establish a coherent framework governing how a party can test credibility at trial. Rule 806 provides that when the trial court admits a hearsay statement, the declarant's credibility "may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness." Fed. R. Evid. 806. This Rule ensures fairness by preventing hearsay from insulating a declarant from scrutiny. It also does not create new impeachment tools or relax existing evidentiary limits. Rather, Rule 806 operates against the backdrop of the Rules governing impeachment generally. This backdrop includes Rule 608(b), which draws a line: specific instances of conduct offered to attack a witness's character for truthfulness "may not be proved by extrinsic evidence." Fed. R. Evid.

608(b). Read together, the Rules authorize impeachment only through the same channels and subject to the same constraints that would apply if the declarant took the stand. *See, United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991) (Rule 806 permits impeachment of a hearsay declarant but "does not obliterate the rules of evidence that govern how impeachment is to proceed"); *United States v. Saada*, 212 F.3d 210, 221–22 (3d Cir. 2000) (Rule 806 allows impeachment only to the extent such impeachment would have been admissible had the declarant testified, and does not override Rule 608(b)'s ban on extrinsic evidence).

The structure in these Rules reflects a deliberate evidentiary policy. A party can test credibility through questioning, argument, and reputation or opinion evidence, while barring proof that would divert the trial into collateral disputes over uncharged misconduct. *See,* Fed. R. Evid. 608(a), (b); *Carter v. Hewitt*, 617 F.2d 961, 971 (3d Cir. 1980) (explaining that the extrinsic-evidence bar exists to avoid collateral mini-trials and jury confusion). Rule 608(b)'s categorical limitation applies regardless of whether the witness is alive, or if the declarant speaks through hearsay. *See, Finley*, 934 F.2d at 839 (Rule 806 does not permit admission of extrinsic evidence barred by Rule 608(b) even when the declarant is unavailable); *Saada*, 212 F.3d at 221–22 (same). Rule 806 does not override this limitation; it incorporates it. *See Finley*, 934 F.2d at 839. A party may impeach a hearsay declarant in the way the Rules allow. To hold otherwise would unjustifiably expand Rule 806 by granting broader impeachment rights when a declarant does not testify. *See Saada*, 212 F.3d at 221–22 (Rule 806 permits impeachment only to the extent such impeachment would have been admissible had the declarant testified); *United States v. White*, 116 F.3d 903, 920 (D.C. Cir. 1997) (permitting questioning about specific acts but

prohibiting reference to extrinsic proof). The Federal Rules do not contemplate this kind of asymmetry, and the Fourteenth Circuit properly declined to create it here.

a. Rule 806 Does Not Override Rule 608(b)'s Restriction on Extrinsic Evidence, Especially When the Declarant Is Unavailable

The district court correctly excluded extrinsic evidence of Copperhead's alleged prior misconduct because Rule 806 only allows impeachment of hearsay declarants by methods otherwise allowed under the Federal Rules of Evidence. Rule 608(b) expressly forbids the use of extrinsic evidence to prove specific instances of conduct offered solely to attack a witness's character for truthfulness. *See,* Fed. R. Evid. 608(b); *United States v. Martz*, 964 F.2d 787, 789 (8th Cir. 1992) (Rule 608(b) bars extrinsic evidence of specific acts used to impeach credibility). The loss of one permissible method of impeachment does not authorize courts to invent another that the Rules expressly prohibit. *See Finley*, 934 F.2d at 839. Although Rule 806 allows a hearsay declarant's credibility to be attacked, Rule 608(b) clarifies, that except for criminal convictions under Rule 609, "extrinsic evidence is not admissible to prove specific instances of a witness' conduct" offered to show untruthfulness. *See*, Fed. R. Evid. 806, 608(b).

Federal courts reject the argument that a declarant's unavailability justifies disregarding Rule 608(b)'s plain text. As the Seventh Circuit explained, "Rule 806 extends the privilege of impeaching the declarant of a hearsay statement but does not obliterate the rules of evidence that govern how impeachment is to proceed." *Finley*, 934 F.2d at 839. In *Finley*, the government introduced audio and video recordings containing statements by an alleged accomplice who did not testify at trial. *Id.* at 838–39. The defendant sought to impeach the declarant by introducing a

sentencing memorandum and a psychotherapist's report in which the declarant allegedly described himself as a "liar and a bullshitter," arguing that Rule 806 permitted use of this extrinsic material because the declarant did not appear in court. *Id.* at 838–40. The Seventh Circuit held that Rule 806 does not permit the admission of evidence otherwise barred by other Federal Rules of Evidence. *Id.* at 839. Since the defendant sought to use extrinsic evidence to prove specific instances of misconduct, related to credibility, Rule 608(b) foreclosed its admission. *Id.* The court emphasized that evidentiary limits do not disappear simply because the declarant is unavailable. *Id.* The court reasoned that allowing extrinsic evidence whenever a hearsay declarant cannot be cross-examined would effectively nullify Rule 608(b). *Id.*

The D.C. Circuit's decision in *United States v. White* underscores that Rule 806 does not expand the means of impeachment but instead incorporates Rule 608(b)'s restrictions as part of the Rules' unified structure. In *White*, the government introduced hearsay statements, through police testimony, made by a confidential informant that implicated the defendant in drug trafficking. 116 F.3d 903, 910–11 (D.C. Cir. 1997). Before the trial, the informant was murdered. *Id.* at 911. The trial court permitted defense counsel to impeach the informant's credibility by questioning the testifying officer about the informant's criminal history, drug use, and drug dealing. *Id.* at 919–20. However, the trial court did not permit defense counsel to impeach the informant by asking about whether the informant made false statements on an employment application or had disobeyed a court order. *Id.* at 920. The *White* court concluded that the trial court should have allowed questioning about those acts because they bore directly on the informant's character for truthfulness. *Id.* Nonetheless, the court held that any such impeachment

still had to conform to Rule 608(b): defense counsel "could not have made reference to any extrinsic proof of those acts," but could inquire only through permissible questioning. *Id.*

Like *Finley*, this case involves a hearsay statement introduced from a declarant who did not testify at trial and a defense effort to impeach that declarant by offering extrinsic evidence of specific instances of dishonest conduct. *Finley* rejected the use of documentary proof of past misconduct barred by Rule 608(b). The same is true here: the proffered materials of an academic violation and an alleged false claim in a job application is like a sentencing memorandum and a psychotherapist report because their respective use concerned specific, collateral acts offered solely to show untruthfulness. And as in *White*, the declarant's unavailability here was absolute. Copperhead died before trial, just as the informant in *White* was unavailable because he had been murdered. *White* draws the critical line that governs this case: while unavailability does not relax Rule 608(b)'s ban on extrinsic proof, it does permit questioning directed at character for truthfulness, so long as counsel does not reference or introduce documentary evidence of specific acts. *White* confirms that impeachment may proceed through the channels the Rules allow. The Fourteenth Circuit refused to admit extrinsic evidence offered to prove specific instances of misconduct, as *Finley* requires, while leaving open permissible avenues of impeachment consistent with *White*. In all three cases, the excluded materials concerned collateral misconduct unrelated to the charged offense. An academic violation is unrelated to a kidnapping plot. The district court's exclusion here reflects the faithful application of Rules 806 and 608(b) endorsed in *Finley* and *White* and should be upheld for the same reasons.

Petitioner may point to *United States v. Friedman* to suggest that a trial court should admit extrinsic evidence when a party seeks to impeach an unavailable hearsay declarant, but *Friedman* does not control this case. 854 F.2d 535 (2d Cir. 1988). The Second Circuit's discussion appears in dicta, offered in a brief footnote without sustained analysis of Rule 608(b)'s text or structure. *Id.* at 570 n.8. The court did not hold that extrinsic evidence was admissible, nor did it confront the categorical prohibition imposed by Rule 608(b). Additionally, *Friedman* predates, and has not been followed by, the subsequent consensus among other federal courts. Later decisions resolved what *Friedman* left unresolved: Rule 806 permits impeachment of a hearsay declarant only through methods that would have been available had the declarant testified, and it does not authorize an end run around Rule 608(b)'s ban on extrinsic evidence. *See Finley*, 934 F.2d at 839; *Saada*, 212 F.3d at 221–22; *White*, 116 F.3d at 920. These courts reject the tentative notion in *Friedman* that a declarant's unavailability justifies expanding the permissible methods of impeachment. Furthermore, *Friedman* does not undermine the Fourteenth Circuit's ruling. It reflects an earlier, undeveloped observation that has since been overtaken by more direct and reasoned authority. The governing rule provides that Rule 806 incorporates, rather than overrides, Rule 608(b)'s categorical limits on extrinsic impeachment evidence.

b. The Rules Preserve Multiple Avenues for Impeachment Without Resorting to Extrinsic Evidence

Rule 608(b) bars extrinsic proof of specific acts, but it does not foreclose impeachment altogether. A party may still impeach a hearsay declarant through permissible means. *See White*, 116 F.3d at 920. These permissible means include questioning specific acts so long as counsel

does not attempt to prove those acts through documents or other extrinsic evidence. *See, United States v. Andrade*, 2025 WL 670456, at *5 (N.D. Cal. 2025) (explaining that Rule 806 "does not create an exception to Rule 608(b)'s prohibition on extrinsic evidence"). Excluding extrinsic evidence did not render Copperhead's credibility immune from attack; it merely required the petitioner to proceed through the channels the Rules allow.

In *Saada*, the Third Circuit squarely addressed whether Rule 806 permits impeachment of a non-testifying hearsay declarant through extrinsic evidence that would have been inadmissible had the declarant testified. 212 F.3d at 220–22. There, the government introduced, and the trial court admitted, an out-of-court statement by a former state judge, as an excited utterance. *Id.* at 218–19. Because the former state judge was deceased at the time of trial, the government sought to impeach his credibility by introducing evidence of his prior removal from the bench and disbarment for unethical conduct—evidence that constituted extrinsic proof of specific instances of misconduct. *Id.* at 219–20. The Third Circuit held that this impeachment was improper because Rule 806 "does not modify Rule 608(b)'s ban on extrinsic evidence of prior bad acts," even when the declarant is unavailable to testify. *Id.* at 221. The court emphasized that Rule 806 permits impeachment only to the extent such impeachment would have been admissible had the declarant appeared as a witness. *Id.* The Third Circuit explained that the loss of one impeachment avenue does not warrant overriding the Rules' plain text. *Id.*

This Court's decision in *Tome v. United States* reinforces the precedent that courts must apply the Federal Rules of Evidence as written, not reshape them based on case-specific fairness concerns. 513 U.S. 150 (1995). The government charged Tome with sexually abusing his young

daughter and introduced prior consistent statements to rebut the defense's custody-dispute fabrication theory. *Id.* at 154–55. Although the statements had some probative value, the child made them after the alleged motive to fabricate arose. *Id.* at 155–56. This Court held that Rule 801(d)(1)(B) admits prior consistent statements only when they predate the alleged motive to fabricate. *Id.* at 156–58. The Court rejected a balancing approach that would admit otherwise barred evidence, emphasizing that courts must enforce the Rules' policy judgments as written. *Id.* at 157–58. Even in a case involving sensitive allegations, this Court confirmed that perceived fairness cannot justify disregarding the Rules' text or structure.

The *Tome* Court articulated that when the Rules impose categorical constraints on admissibility, courts must enforce those constraints as written, rather than adjust them to compensate for perceived disadvantages in credibility testing. Similarly, Rule 608(b) categorically bars extrinsic proof of specific acts attacking a witness's character for truthfulness, and Rule 806 does not allow courts to override that bar based on a declarant's unavailability. *Saada* emphasized that equal footing limits impeachment methods, not the ability to impeach. Here, petitioner could further probe the reliability of Copperhead's statement itself, focusing on its context, content, and consistency with other evidence in the record. The district court's ruling did not prevent petitioner from arguing that Copperhead's statement was self-serving, emotionally charged, or unreliable in light of the surrounding circumstances. Just as *Saada* refused to expand the means of impeachment to admit extrinsic proof of specific instances of misconduct, the district court here excluded evidence of Copperhead's alleged past dishonesty while preserving permissible avenues of impeachment.

c. The District Court Acted Within Its Broad Discretion, and the Declarant's Excited Utterance Was Properly Admitted

The district court did not abuse its discretion in excluding the extrinsic evidence, particularly where the hearsay statement was admitted under a firmly rooted exception. This Court have firmly established the excited-utterance exception. Additionally, this Court recognizes statements made under the stress of a startling event to possess sufficient indicia of reliability. *White v. Illinois*, 502 U.S. 346, 355–56 (1992) (holding that spontaneous statements made to police shortly after a sexual assault fell within a firmly rooted exception); *Idaho v. Wright*, 497 U.S. 805, 820 (1990) (explaining that firmly rooted exceptions carry guarantees of trustworthiness sufficient to satisfy reliability concerns). Whether a statement qualifies as an excited utterance turns on fact-intensive considerations, including the declarant's emotional state, the timing of the statement, and the surrounding circumstances. These factual determinations fall "within the province of the trial court." *United States v. Joy*, 192 F.3d 761, 766 (7th Cir. 1999). After admitting hearsay, the court applies this deferential standard to decisions regulating the scope and form of impeachment. *See United States v. Serna*, 799 F.2d 842, 850 (2d Cir. 1986) (holding that trial courts have broad discretion to assess whether impeachment evidence meaningfully undermines the credibility of admitted hearsay); *United States v. Bari*, 750 F.2d 1169, 1178 (2d Cir. 1984) (emphasizing that evidentiary rulings balancing probative value against confusion and collateral distraction are reviewed only for abuse of discretion).

Courts have treated and settled the excited utterance exception as a foundational hearsay doctrine. In *White*, this Court upheld the admission of a child's out-of-court statements describing a sexual assault, which she made shortly after the incident to a babysitter and later

repeated the same day to her mother, a police officer, and a nurse during a medical examination. 502 U.S. at 355–56. This Court emphasized that statements made under the stress of a startling event carry sufficient guarantees of trustworthiness to allow admission without cross-examination. *Id.* In *Wright*, this Court distinguished excited utterances from other hearsay and explained that the declarant's stress makes conscious reflection or fabrication unlikely. 497 U.S. at 820. Consistent with that understanding, courts of appeals have held that whether a statement qualifies as an excited utterance turns on context-specific factual determinations best made by the trial court. *See Joy*, 192 F.3d at 766 (affirming admission of 911 statements made minutes after a heated confrontation involving a firearm, where the declarant remained visibly agitated and under the stress of the event).

Copperhead's statement fits within this Court's excited utterance jurisprudence. Like the declarants in *White* and *Joy*, Copperhead made her statement minutes after a startling event, witnessing Hemlock's arrest, while visibly distressed and in flight, blurting her accusation to the first person she encountered in a nearby park. She did not respond to questioning or provide a reflective narrative; instead, she spontaneously exclaimed that the plan was "all Atticus' idea." These circumstances mirror the core features that justified admission in *White* and *Joy*: responses made to a startling event are presumed reliable. The district court acted well within established precedent in admitting Copperhead's statement as an excited utterance.

This Court's approach to the Federal Rules of Evidence protects the discretion of the trial court in making evidentiary decisions. In *United States v. Abel*, this Court held that courts may admit extrinsic evidence to show bias when it is probative and survives Rule 403 balancing. 469

U.S. 45, 54–55, 470 (1984). This Court stressed that the Federal Rules reflect carefully calibrated judgments about relevance, probative value, and prejudice, and that trial courts must apply those judgments in context. *Id.* at 54–55. This Court emphasized that admissibility depends on the purpose for which a party offers evidence and the governing rule's limits, subject to the district court's discretion. *Id.* at 469–71.

After admitting hearsay, trial courts exercise broad discretion over impeachment and evidentiary boundaries. In *Serna*, one defendant sought to introduce hearsay testimony from a non-testifying coconspirator who had denied knowing the defendants at a separate trial. 799 F.2d at 849–50. The district court excluded the hearsay evidence after concluding that the government lacked a similar motive to cross-examine the declarant at the earlier proceeding, and that admission would raise collateral credibility concerns. *Id.* at 850. The Second Circuit affirmed, holding that determinations concerning the admissibility of hearsay and the scope of impeachment under Rules 804 and 806 require close, case-specific judgments entrusted to the trial court. *Id.* The court explained that courts assess credibility-doubt by comparing contexts and review those judgments only for abuse of discretion. *Id.*

The trial court's discretion exists to regulate the scope and form of impeachment to prevent trials from devolving into collateral disputes. In *Bari*, the defendants challenged a series of evidentiary rulings that limited cross-examination of a key government witness, including the court's refusal to permit inquiry into the witness's decade-old hospitalization for paranoid schizophrenia. 750 F.2d at 1178–80. The defendants argued that this limitation impaired their ability to test the witness's credibility. *Id.* at 1179. The *Bari* court emphasized that the proposed

line of impeachment would have triggered a "time-wasting, confusing digression" and a collateral mini-trial bearing only marginal relevance to credibility. *Id.* at 1179. Because trial judges can best manage that balance in real time, the court reaffirmed that appellate courts must afford substantial deference to such rulings and will not disturb them absent a clear abuse of discretion. *Id.*

Importantly, this case does not challenge the admissibility of Copperhead's statement as an excited utterance, and the questions presented do not place that issue before the Court. The district court's threshold determination that the statement fell within a firmly rooted hearsay exception lies outside the scope of review. The sole question is whether, after admitting the statement, the court abused its discretion by limiting impeachment and excluding extrinsic evidence of collateral misconduct. As in *Serna* and *Bari*, the district court did not abuse its discretion by admitting the hearsay statement and then preventing the trial from devolving into side litigation over unrelated allegations of past misconduct. Like *Serna* and *Bari*, the excluded evidence offered, the formal academic integrity violation and the false job application, do not provide insight into the credibility of an admitted kidnapping plot statement. Instead, it poses a substantial risk of distracting the jury from the charged conduct.

d. The Limitation on Extrinsic Evidence Applies with Equal Force to Hearsay Declarants Because Its Purpose Is to Prevent Mini-Trials

Rule 608(b)'s ban on extrinsic evidence applies fully in the hearsay context regardless of a declarant's unavailability. Rule 608(b) embodies a long-standing evidentiary policy to prevent collateral litigation over a witness's past conduct. The purpose of the extrinsic-evidence bar is

"to avoid minitrials on wholly collateral matters which tend to distract and confuse the jury" and to prevent unfair surprise arising from allegations of misconduct that cannot be reliably adjudicated during trial. *Carter v. Hewitt*, 617 F.2d 961, 971 (3d Cir. 1980). Rule 608(b) exists to prevent confusing the jury with peripheral disputes over a witness's character. *Martz*, 964 F.2d 787, 789 (8th Cir. 1992) (holding that impeachment must stop at the witness's answer to avoid collateral mini-trials); *see also*, *Foster v. United States*, 282 F.2d 222, 223–24 (10th Cir. 1960) (holding—before the Federal Rules were codified—that courts may not admit extrinsic evidence offered solely to attack a witness's veracity).

Rule 608(b) protects trial management and judicial economy. In *Carter*, the Third Circuit addressed the scope and purpose of Rule 608(b)'s limitation on impeachment by specific instances of conduct. 617 F.2d at 969–71. The case arose from a civil rights action in which the plaintiff–inmate alleged that prison guards had beaten him. *Id.* at 964–65. During cross-examination, the defendants confronted the plaintiff with a letter he had written to another inmate describing how to file brutality complaints. *Id.* Because the plaintiff admitted authorship of the letter, the court held that its use did not violate Rule 608(b)'s extrinsic-evidence ban. *Id.* at 969–70. In explaining the Rule's limits, however, the court emphasized that the prohibition on extrinsic evidence reflects structural concerns about trial management. *Id.* at 971.

Rule 608(b) draws a clear line between permissible inquiry into credibility and impermissible proof offered to establish it. In *Martz*, the Eighth Circuit addressed a defendant's attempt to impeach a government witness by introducing extrinsic evidence relating to the witness's prior criminal pleas in unrelated cases. 964 F.2d at 788–89. The court permitted cross-

examination about the witness's prior guilty pleas and cooperation benefits but excluded the plea documents themselves as impermissible extrinsic evidence of credibility. *Id.* at 788–90. The Eighth Circuit affirmed and held that Rule 608(b) allows inquiry into specific acts on cross-examination but forbids the use of extrinsic evidence to prove those acts. *Id.* at 789. Because the proffered documents would have shifted the jury's attention away from the charged offense and toward disputes over unrelated plea negotiations, their exclusion fell well within the district court's discretion. *Id.*

As in *Carter* and *Martz*, the petitioner sought to impeach credibility by introducing extrinsic evidence of alleged past misconduct that bore no connection to the charged offense or to the circumstances surrounding Copperhead's statement. Admitting the academic violation and the job application would have forced the jury to resolve disputes over unproven allegations and diverted its attention from the kidnapping charge. As *Martz* warns, the risk of confusion and overvaluation loomed large here: "proof" of unrelated misconduct would have invited jurors to judge the declarant's character instead of assessing the reliability of the specific statement before them. Rule 608(b) exists to prevent this result, and its rationale does not weaken simply because the statement enters the record through a hearsay exception.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fourteenth Circuit should be affirmed.

Respectfully Submitted,
/s/ Team 9
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