

No. 25-7373

IN THE SUPREME COURT OF THE UNITED STATES

ATTICUS HEMLOCK,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

**BRIEF FOR PETITIONER,
ATTICUS HEMLOCK**

Attorneys for Petitioner

QUESTIONS PRESENTED

- I. Whether law enforcement violates the Fourth Amendment when officers, lacking a warrant and absent exigent circumstances, effect an arrest by ordering a suspect to exit his home and arresting him outside, where the suspect's compliance is compelled by a show of authority directed into the home.
- II. Whether the Fourth Amendment is violated when law enforcement opens a closed container inside a shared residence based solely on a co-occupant's general consent to search, when surrounding circumstances create objective ambiguity about ownership, and officers make no inquiry to resolve that ambiguity.
- III. Whether, under Federal Rule of Evidence 806, a defendant may impeach the credibility of an unavailable hearsay declarant with extrinsic evidence of specific instances of conduct when the Government introduces the declarant's accusatory hearsay for its truth at trial and cross-examination is impossible.

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RULES AND 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

FED. R. EVID. 806 – Attacking and Supporting the Declarant:

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

FED. R. EVID. 608(b) – A Witness’s Character for Truthfulness or Untruthfulness:

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness’s conduct in order to attack or support the witness’s character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

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

STATEMENT OF THE FACTS

Atticus Hemlock ("Hemlock") resided in a small cabin located on a wooded property in Boerum Village, Boerum. (R. 15, 20.) Since May 2023, Hemlock had lived there with his girlfriend Fiona Reiser ("Reiser"). (R. 15) The cabin was located near a public walking path in Joralemon State Park. (R. 20–21.) In February 2024, the United States Department of Tourism announced that Under Secretary for Rural Development Jodie Wildrose ("Jodie") would visit Boerum Village in April as part of the Department's "Grow Your Own Way" program. (R. 3–4.) The program involved acquiring underutilized farmland to develop public garden attractions. (*Id.*)

On March 29, 2024, Elvis Hoag ("Hoag"), a barista at a local coffee shop, contacted police after overhearing a conversation between two patrons discussing what he believed to be a plan involving a federal official named "Jodie." (R. 7–8.) Hoag later identified the individuals as Hemlock and Iris Copperhead ("Copperhead") based on social media accounts he followed. (R. 7.) The following day, March 30, 2024, Tina Caplow ("Caplow"), a manager at a superstore in Boerum Village, contacted police after observing two individuals purchase zip ties, ski masks, a folding knife, trash bags, and bear spray with cash. (R. 6.) Caplow did not overhear any conversation and did not recognize the individuals. (*Id.*) Local police forwarded both reports to the Federal Bureau of Investigation because one report referenced a federal government official. (R. 20.)

FBI Agents go to Hemlock's home without a warrant. On the afternoon of April 2, 2024, FBI Special Agents Hugo Herman ("SA Herman") and Ava Simonson ("SA Simonson") drove to

Hemlock's residence to speak with him as part of their investigation. (R. 20–21.) The agents did not have an arrest warrant and later testified that they initially lacked probable cause to arrest Hemlock when they arrived. (R. 21.)

Hemlock responded to the agents from inside the cabin, standing behind a closed screen door. (R. 11.) The agents remained outside and stated that they were conducting an investigation and wanted to ask Hemlock questions. (*Id.*) Hemlock declined to speak with them and stated that he did not wish to come outside. (*Id.*) Despite his refusal, the agents continued to ask Hemlock to exit the cabin to talk. (*Id.*) During the exchange, SA Herman observed two bottles labeled “chloroform” inside the cabin and asked Hemlock about them. (R. 11–12.) Hemlock responded that the agents should not worry about the bottles and shifted his position. (*Id.*) Hemlock also asked whether the agents' visit had to do with “Jodie,” a name the agents had not mentioned. (*Id.*) After eight minutes of this interaction, the agents stepped away from the cabin and determined that they had probable cause to arrest Hemlock. (R. 22.)

Hemlock is ordered outside and arrested without a warrant. The agents returned to the cabin after a few minutes and again instructed Hemlock to come outside. (R. 12.) During this second encounter, both agents raised their voices and placed their hands on their gun holsters and continued shouting at Hemlock to exit. (R. 12, 25–26.) After about four minutes, Hemlock eventually complied and exited the cabin. (R. 12.) Once Hemlock stepped onto the ground outside his home, the agents arrested him for attempted kidnapping of a federal officer. (*Id.*) SA Herman conducted a search incident to arrest and seized a spiral-bound notebook containing handwritten entries from Hemlock's pocket. (R. 23–24.)

After Hemlock was seized, another agent conducted a search of the cabin. Approximately twenty minutes after Hemlock's arrest, Reiser returned to the cabin. (R. 13.) FBI Special Agent

Kiernan Ristroph (“SA Ristroph”) approached her, informed her that Hemlock had been arrested, and requested permission to look around the residence. (*Id.*) Reiser permitted the agent to enter. (*Id.*) Inside the cabin, SA Ristroph asked about the layout of the home. (R. 13–14.) Reiser explained that she and Hemlock shared a bedroom on the first floor and that a loft accessed by stairs was used by Hemlock for storage and as an office. (*Id.*) SA Ristroph did not enter the loft. (*Id.*)

At the bottom of the stairs, SA Ristroph observed a closed, unlabeled cardboard box resting on a stair. (R. 13.) Without asking about ownership, SA Ristroph opened the box. (*Id.*) Inside were rope, zip ties, ski masks, duct tape, gloves, a folding knife, and bottles of chloroform. (*Id.*) Reiser stated that she had never seen the items before, but they looked like outdoor gear used by Hemlock and Copperhead. (R. 15–16.) The box and its contents were seized as evidence. (R. 13–14.)

Trial evidence included statements by an unavailable declarant. At trial, the Government’s case included introduced accusatory hearsay testimony from Theodore Kolber (“Kolber”), a Boerum Village resident who encountered Copperhead, an associate of Hemlock, in Joralemon State Park shortly after Hemlock’s arrest. (R. 41–43.) Kolber testified that Copperhead appeared distressed and, without prompting, stated that Hemlock was responsible for what had occurred and that it was “all Atticus’ idea,” while expressing concern about going to prison. (R. 43.)

Copperhead was arrested later that evening and died the same night from an acute aortic rupture. (R. 46.) She was unavailable to testify at trial. Hemlock sought to impeach Copperhead’s credibility under Federal Rule of Evidence 806 by introducing extrinsic evidence of specific instances of prior dishonest conduct. (R. 47–49.) The district court excluded the impeachment evidence. (R. 49–50.)

STATEMENT OF THE CASE

On April 3, 2024, a federal grand jury in the Northern District of Boerum returned an indictment charging Hemlock with one count of attempted kidnapping of a federal officer, in violation of 18 U.S.C. §§ 1201(a)(5) and 1201(d). (R. 1–2.) The indictment alleged that Hemlock took substantial steps toward kidnapping Jodie, the Under Secretary for Rural Development with the United States Department of Tourism, in connection with her scheduled official visit to Boerum Village. (R. 1–2.)

Prior to trial, Hemlock filed two motions to suppress evidence under the Fourth Amendment. (R. 18.) First, Hemlock moved to suppress a notebook seized from his person at the time of his arrest, arguing that law enforcement agents effected a warrantless arrest in violation of *Payton v. New York* by coercively compelling him to exit his home. (R. 18–19.) Second, Hemlock moved to suppress physical evidence recovered from a closed cardboard box inside his residence, contending that the warrantless search exceeded the scope of any valid third-party consent, and that the consenting co-occupant lacked apparent authority over the container. (R. 31–32.)

The district court, the Honorable Florence Araiza presiding, held a hearing on the motions to suppress on July 29, 2024. (R. 18.) After hearing testimony and argument, the court denied both motions in full, concluding that the arrest did not violate the Fourth Amendment and that the search of the closed container was reasonable based on apparent authority. (R. 31, 39.)

Hemlock proceeded to trial before a jury beginning on August 6, 2024. (R. 40.) At trial, the Government introduced an out-of-court statement made by Copperhead implicating Hemlock in the alleged kidnapping plot, which the district court admitted under the excited utterance exception

to the hearsay rule. (R. 43–44.) Copperhead was unavailable to testify, having died shortly after Hemlock’s arrest. (R. 45.)

Hemlock sought to impeach Copperhead’s credibility pursuant to Federal Rule of Evidence 806 by introducing extrinsic evidence of specific instances of Copperhead’s prior dishonest conduct. (R. 47–49.) The Government objected, and the district court excluded the evidence, ruling that Rule 806 does not override Rule 608(b)’s prohibition on extrinsic evidence offered to impeach a declarant’s character for truthfulness. (R. 49–50.)

On August 12, 2024, the jury found Hemlock guilty of attempted kidnapping of a federal officer. (R. 51.) On October 17, 2024, the district court sentenced Hemlock to ten years’ imprisonment. (*Id.*)

Hemlock timely appealed his conviction to the United States Court of Appeals for the Fourteenth Circuit, raising the same three issues addressed by the district court. (R. 51–52.) On April 14, 2025, the Fourteenth Circuit affirmed the conviction in all respects. (R. 51–57.)

Hemlock subsequently petitioned this Court for a writ of certiorari. On December 2, 2025, this Court granted certiorari on all three questions presented. (R. 62.)

SUMMARY OF ARGUMENT

Hemlock’s warrantless arrest violated the Fourth Amendment under *Payton v. New York*. The Fourth Amendment draws a firm line at the home’s entrance, and officers may not effectuate an arrest by projecting arrest authority into a home without a warrant or exception. Here, SA Herman and SA Simonson arrived without a warrant, engaged Hemlock while he remained inside his home, then conferred and decided to arrest him while he was still inside. They returned to the doorway, repeatedly ordered Hemlock to exit, and arrested him immediately upon compliance.

Because Hemlock's exit was compelled submission to a show of authority directed into the home, not voluntary exposure to a public place, the arrest was the functional equivalent of an in-home arrest, and the resulting evidence must be suppressed.

The search of Hemlock's closed container exceeded the limits of third-party consent. Although a co-occupant may consent to a search of shared premises, that consent extends only to areas and effects over which the consenter has actual or apparent authority. Here, Reiser gave general consent to "look around," but explained that the loft was Hemlock's storage and office space and that she did not use it. Consistent with that information, SA Ristroph did not enter the loft, but then opened a closed, unlabeled box positioned on the stairs leading to that loft without asking a single question about ownership. Where surrounding circumstances create objective ambiguity about authority over a closed container, officers must make further inquiry before searching; because the agent did not, the search violated the Fourth Amendment, and the box evidence must be suppressed.

Rule 806 required admitting Hemlock's impeachment of Copperhead once the Government introduced her hearsay accusation for its truth. Rule 806 allows a hearsay declarant's credibility to be attacked as if the declarant testified, and it exists to prevent the party from presenting testimony by hearsay while insulating the declarant from credibility testing. Copperhead's statement blaming Hemlock was admitted as an excited utterance, yet Copperhead was unavailable, and cross-examination was impossible. Hemlock offered documented impeachment showing Copperhead's dishonesty, but the district court excluded not only the documents but any testimony about them, leaving the jury with an untested accusation. When the declarant is unavailable, applying Rule 608(b) to categorically bar extrinsic impeachment would nullify Rule 806; the exclusion was error and requires reversal.

ARGUMENT

Standard of Review

In reviewing the denial of a motion to suppress, courts review factual findings for clear error and review de novo the ultimate question whether the Fourth Amendment was violated. *Ornelas v. United States*, 517 U.S. 690, 691 (1996).

This Court reviews evidentiary rulings for abuse of discretion. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997). However, to the extent the district court's exclusion of impeachment evidence rested on an interpretation of the Federal Rules of Evidence, specifically the interaction between Rules 806 and 608(b), review is de novo. *United States v. Wood*, 109 F.4th 1253, 1263 (10th Cir. 2024).

I. Under *Payton V. New York*, The Fourth Amendment Is Violated When Law Enforcement Officers, Lacking A Warrant, Compel A Person Inside the Home to Exit in Order to Effectuate an Arrest.

The Fourth Amendment affords its greatest protection to the home, placing firm limits on the circumstances under which law enforcement may exercise arrest authority within it. U.S. CONST. amend. IV. Absent a warrant or a recognized exception, law enforcement may not effectuate an arrest by extending arrest authority into the home. As this Court has explained, the Fourth Amendment “has drawn a firm line at the entrance to the house.” *Payton v. New York*, 445 U.S. 573, 590 (1980).

That principle governs here.¹ Although SA Herman and SA Simonson remained physically outside the residence, they directed Hemlock to exit and arrested him immediately upon compliance. (R. 11–12, 22–23.) The arrest followed agents' directives issued to Hemlock while he

¹ The parties do not dispute that agents had probable cause to arrest Mr. Hemlock, and the Government does not contend that exigent circumstances justified a warrantless arrest. These issues are not before the Court.

remained inside the home. When law enforcement accomplishes an arrest, by ordering a person to leave the home so that an arrest can be completed outside, the Fourth Amendment's protection of the home is implicated in full. Therefore, this case does not concern a spontaneous arrest that happened to occur near a residence. It concerns a deliberate sequence in which law enforcement encountered Hemlock inside his home, lacked authority to arrest him at the outset, withdrew to confer, and then decided, while Hemlock remained inside, to arrest him by compelling his exit. The constitutional problem is not cured by the agents' physical position outside the threshold. Where officers decide to arrest a resident while he remains inside his home and then use commands to execute that decision, the arrest implicates the home in the same manner as a physical entry. *Payton's* protection turns on substance, not choreography.

While warrantless arrests in public places may be permissible, the Fourth Amendment imposes heightened protections when an arrest authority reaches into the home. See *United States v. Watson*, 423 U.S. 411 (1976). The constitutional inquiry therefore turns not on where officers stand, but on whether law enforcement exercised arrest authority within the home without judicial authorization.

The Fourth Amendment's protection of the home does not turn on physical entry alone, but on the projection of arrest authority across the threshold. Accordingly, Part A explains why agents exercised arrest authority across the threshold while Hemlock remained inside his home, triggering *Payton's* warrant requirement. Part B then demonstrates that Hemlock's exit was not voluntary public exposure, but submission to a show of police authority that completed a warrantless in-home seizure.

A. *Payton*'s Warrant Requirement Attached When Officers Decided to Arrest Hemlock While He Remained Inside His Home.

Under *Payton*, the Fourth Amendment draws its most categorical boundary at the home. “At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Payton*, 445 U.S. at 590 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Accordingly, “[i]n terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house.” *Id.* Absent a warrant (or an exception not at issue here), officers may not cross that threshold to seize a resident. *Id.* at 581. Crucially, *Payton* condemns not merely physical intrusion, but the exercise of governmental arrest power penetrating the home’s threshold. *Id.* at 589–90. That is why courts applying *Payton* look to where arrest authority is exercised, not where officers stand. As the Tenth Circuit explained, “the location of the arrest is determined by the location of the arrested person, not by the location of the arresting officers.” *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989). Under *Payton*, the warrant requirement is triggered at the moment officers decide to arrest a person while he remains inside the home, not when the arrest is later completed outside.

That is precisely what occurred here. Special agents encountered Hemlock inside his home. After observing the chloroform and Hemlock’s unprompted reference to Jodie, the special agents conferred and made the arrest decision while Hemlock remained inside the home, agreeing that “[they] would go back over to the home and try to get [Hemlock] to come outside where [they] would arrest him.” (R. 23.) At that moment, arrest authority attached, and *Payton*’s warrant requirement was triggered. The agents did not merely request a conversation. They repeatedly commanded Hemlock to exit his home and comply, knowing that doing so would place him in a public space near a park walking path. (R. 20–21.) His eventual compliance was not voluntary

exposure to public view, but submission to a show of authority directed into the home. Having made that decision, special agents chose to execute the arrest through further engagement at the doorway rather than seeking judicial authorization. *Payton* makes clear that it is the constitutional boundary that matters: “the ‘physical entry of the home’ is the chief evil against which the wording of the Fourth Amendment is directed,” because the warrant requirement “minimizes the danger of needless intrusions” into the home. *Payton*, 445 U.S. at 585.

Courts confronting the same tactic, where officers decide to arrest a person inside the home, then order them out to complete the arrest “outside,” treat it as a *Payton* violation. In *United States v. Saari*, four officers went to a residence to arrest the defendant, refused to leave, and ordered him out; the Sixth Circuit held *Payton* was violated because the police “effected” the arrest by exercising authority over a person while he remained inside. 272 F.3d 804, 808–09 (6th Cir. 2001). Likewise, in *United States v. Al-Azzawy*, officers surrounded a trailer and compelled the defendant to exit through authoritative commands, including orders issued by bullhorn; the Ninth Circuit held that this show of authority constituted a home arrest even though officers never crossed the threshold. 784 F.2d 890, 893 (9th Cir. 1985). Where officers “engineer” an exit specifically to avoid a warrant, courts recognize that the Fourth Amendment cannot be evaded by choreography. *United States v. Morgan*, 743 F.2d 1158, 1166–67 (6th Cir. 1984).

This is consistent with *Payton*’s core reasoning. *Payton* rejects formal distinctions that would make constitutional protection turn on tactics rather than substance. It emphasizes that “any differences” between arrest and search entries are “merely ones of degree rather than kind,” because both intrusions share the same “fundamental characteristic:” breach of the home’s protected boundary. *Payton*, 445 U.S. at 589. The same is true here. Officers may not do indirectly what *Payton* forbids directly.

Treating physical positioning alone as dispositive would create a blueprint for evading *Payton*. Officers could decide to arrest a resident who is inside their home, remain physically outside, and issue commands until compliance is achieved, transforming every doorstep into a warrantless arrest zone. That approach would collapse *Payton*'s "firm line" into a matter of officer positioning and invite precisely the kind of end run the Fourth Amendment forbids. *Payton* draws a constitutional boundary to prevent such manipulation, not to authorize it.

After deciding to arrest Hemlock while he remained inside his home, agents re-approached the doorway and resumed contact from outside the threshold, carrying out that arrest decision without judicial authorization. (R. 23.) Under *Payton*, that sequence triggers the warrant requirement because the special agents exercised arrest authority while Hemlock remained within the home's protection, then used Hemlock's exit to complete the seizure without judicial authorization. The Fourth Amendment does not permit officers to decide to arrest a person inside the home and then convert that arrest into a "public" one by ordering the person to step outside. See *Payton*, 445 U.S. at 590; accord *Maez*, 872 F.2d at 1450; *Saari*, 272 F.3d at 808–09; *Al-Azzawy*, 784 F.2d at 893; *Morgan*, 743 F.2d at 1166–67.

Because special agents decided to arrest Hemlock while he remained inside his home, the warrant requirement was triggered at that moment under *Payton*. His subsequent exit did not retroactively transform that in-home exercise of arrest authority into a public arrest; it merely completed what courts have treated as the functional equivalent of an in-home arrest, often described as a constructive entry, accomplished without judicial authorization.

B. Officers Effectuated an Unconstitutional In-Home Arrest by Compelling Hemlock's Exit Through Escalating Commands and a Coercive Show of Authority.

Having already exercised arrest authority while Hemlock remained inside his home, agents then completed the seizure through coercive tactics that left Hemlock no realistic choice but

compliance. The Fourth Amendment distinguishes voluntary exposure to a public place from submission to a show of authority. Where officers employ commands and control to compel movement, the seizure is complete upon submission. *California v. Hodari D.*, 499 U.S. 621, 626 (1991) (holding that a seizure occurs when a show of police authority produces submission, even in the absence of physical force).

Whatever investigative character the encounter may initially have had, it ended once Hemlock refused to engage, and agents persisted. A knock-and-talk depends on the resident's willingness to converse. When a resident declines and officers respond by escalating commands rather than disengaging or seeking a warrant, the encounter ceases to be consensual and becomes an exercise of authority.

The encounter at Hemlock's residence was coercive from the outside and escalated steadily. Special agents initially asked Hemlock to come outside, stating they were "conducting an investigation" and that they "had some questions." (R. 11.) Hemlock immediately declined: "Umm, can I not? ... Plus, you guys freak me out. So, I don't think so." (*Id.*) He reiterated that he felt "pretty uneasy" and did not wish to step outside. (*Id.*)

Rather than disengage or seek a warrant, agents escalated, transforming requests into directives: "Sir, it is very important that you come outside," followed by "Come outside please!" (R. 11.) When Hemlock again refused, "No way. Leave me alone! I told you I don't want to come outside!" agents persisted, instructing him to "calm down" while continuing to press for compliance. (*Id.*) At no point did agents indicate that Hemlock was free to remain inside or terminate the encounter.

The coercion intensified after agents decided to arrest Hemlock. On body-camera footage, special agents acknowledged that Hemlock "clearly does not want to talk," then agreed: "We'll get

him to come outside and then we'll arrest him.” (R. 12.) Minutes later, the language hardened into commands: “Sir! Come outside! ... Now!” and “Get outside right now!” (*Id.*) Only after this escalation did Hemlock relent: “Oh god, uh, okay, okay. I'll come out.” (*Id.*) His compliance followed the arrest decision and authoritative commands, not consent.

Courts have consistently held that such tactics transform compliance into submission. In *United States v. Jerez*, officers repeatedly knocked on a motel room door late at night, shined flashlights into the window, and persisted until the occupants opened the door. 108 F.3d 684, 687–89 (7th Cir. 1997). The court held that a seizure occurred because “a reasonable person would not have felt free to ignore the officers and continue to sleep.” *Id.* at 692. Although *Jerez* involved a motel room rather than a home, the reasoning applies with greater force here, where the Fourth Amendment’s protection is at its peak and officers used sustained commands at the doorway of a private residence. Hemlock’s conduct mirrors the compelled compliance in *Jerez*; he did not initiate contact, did not invite agents inside, and exited only after persistent commands at his doorway. (R. 12–13.)

The coercive environment was reinforced by agents’ physical posture and display of force. Both SA Herman and SA Simonson wore duty belts equipped with firearms, tasers, and batons. (R. 25–26). When special agents re-approached the doorway to execute the arrest decision, each placed a hand on their holstered firearm, a movement the special agent acknowledged would be “intimidating” to a layperson. *Id.* Under *United States v. Johnson*, commands and conduct that communicate restraint of movement effect a seizure when a reasonable person would believe compliance is required. 626 F.2d 753, 756–57 (9th Cir. 1980). Under *United States v. Mendenhall*, no reasonable person confronted by armed officers issuing repeated commands at his front door would believe he could simply close the door and end the encounter. 446 U.S. 544, 554 (1980)

(identifying relevant circumstances such as the presence of multiple officers and language or tone indicating that compliance may be compelled).

Courts evaluating encounters of similar knock and talk escalations have reached the same conclusion. In *United States v. Reeves*, officers remained at the threshold and continued issuing authoritative direction after the defendant declined to engage; the court held that the encounter became a seizure once police conduct would communicate to a reasonable person that compliance was required. 524 F.3d 1161, 1167–68 (10th Cir. 2008). Hemlock’s experience mirrors *Reeves*: officers remained at the threshold for fifteen minutes and continued issuing authoritative direction after he declined to engage. (R. 13.) Their continued commands at the threshold transformed the encounter into compelled compliance.

The Sixth Circuit’s decision in *Morgan* confirms that such engineered exits constitute unlawful seizures. 743 at 1165–66. There, officers lacking a warrant ordered the defendant to exit his home so they could arrest him outside. *Id.* The court held that the arrest violated the Fourth Amendment because officers used commands to effectuate the arrest while the defendant remained inside. *Id.* at 1166. The court emphasized that the relevant inquiry was not where the arrest culminated, but how police authority was exercised.

That same sequence unfolded here. Agents executed the arrest through escalating commands that compelled compliance. Hemlock’s exit was the final step of a pre-determined arrest, not a voluntary encounter in a public space. This Court has repeatedly rejected attempts to accomplish indirectly what the Fourth Amendment forbids directly. See *Kyllo v. United States*, 533 U.S. 27, 34 (2001). Although *Kyllo* involved surveillance technology, its core principle applies here: the home’s constitutional protection cannot be evaded through tactical manipulation of

boundaries. *Id.* Remaining outside the doorway while projecting coercive arrest authority inward is no less an end run than the conduct *Kyllo* condemned.

The inevitability of the arrest underscores the coercion. The moment Hemlock stepped outside, agents handcuffed him and announced his arrest. (R. 12.) There was no intervening conversation, no further inquiry, and no indication that compliance would avoid arrest. Hemlock's exit was not voluntary public exposure; it was submission to a sustained show of police authority that completed a warrantless in-home seizure. Because Hemlock's compliance was compelled by police authority that completed a warrantless in-home arrest, the Fourth Amendment was violated, and all evidence derived from that arrest must be suppressed.

II. Special Agent Ristroph Violated the Fourth Amendment by Opening Hemlock's Closed Container Based Solely on Co-Occupant Reiser's General Consent Without Clarifying Ownership.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. Warrantless searches are presumptively unreasonable unless they fall within a "specifically established and well-delineated" exception. *Schneckloth v. Bustamante*, 412 U.S. 218, 219 (1973). One such exception permits law enforcement to conduct a search based on voluntary third-party consent. *Id.* at 245. But that exception is limited: officers may search only those areas and effects over which the consenting party possesses actual or apparent authority. *United States v. Matlock*, 415 U.S. 164, 171 (1974).

This case concerns the limits of third-party consent, specifically, whether a co-occupant's general consent to search a shared residence authorizes officers to open a closed container when surrounding circumstances create uncertainty about ownership and officers make no inquiry to resolve that uncertainty. Third-party consent is not a blanket authorization to search everything

found within a home. Its consent extends only to those areas and effects over which the consenting occupant has authority. *Matlock*, 415 U.S. at 171.

Where authority over a particular item is unclear, apparent authority exists only if an officer's belief in the consenter's authority is objectively reasonable under the circumstances known at the time. *Ill. v. Rodriguez*, 497 U.S. 177, 188–89 (1990). When officers confront facts that would cause a reasonable officer to question whether an item is subject to mutual use or joint access, the Fourth Amendment requires further inquiry before proceeding. *Id.* at 188. Ambiguity about ownership therefore constrains, rather than expands, the scope of consent.

This Section proceeds in two parts. Part A explains why consent to search a residence does not automatically extend to closed containers associated with another occupant's private space. Part B then shows that, even if scope were uncertain, apparent authority fails where officers confront ambiguity and proceed without clarifying ownership or control.

A. Consent to Search a Residence Does Not Automatically Extend to Closed Containers Associated with Another Occupant's Private Use.

Third-party consent is limited not by location alone, but by authority over the specific effect searched. A co-occupant may authorize a warrantless search only of areas and effects subject to her "mutual use" or "joint access or control for most purposes." *Matlock*, 415 U.S. at 171. This limitation is most pronounced when officers encounter closed containers, which "historically command a high degree of privacy." *United States v. Waller*, 426 F.3d 838, 848 (6th Cir. 2005).

Courts applying *Matlock* have therefore drawn a consistent constitutional line: authority over a shared premises does not imply authority over every occupant's closed container, even when that container is located in a shared or transitional space. In *United States v. Block*, the Fourth Circuit held that a mother's consent to search a home did not extend to her son's locked footlocker, emphasizing that closed containers remain "the objects of [one's] highest privacy expectations."

590 F.2d 535, 541 (4th Cir. 1978). Likewise in *United States v. Salinas-Cano*, officers exceeded the scope of consent when they searched a closed container belonging to another occupant, notwithstanding valid consent to search the apartment itself. 959 F.2d 861, 864–65 (10th Cir. 1992).

Those principles apply with full force here. Although Reiser consented to a general search of the residence, she immediately delineated the boundary of her authority. Before any container was encountered, Reiser told SA Ristroph that the loft was used by Hemlock for “storage and an office space,” that she “did not really ever go up there,” and that she did not know what Hemlock kept in that area. (R. 13, 15.) Furthermore, the stairs here functioned as a direct extension of Hemlock’s exclusive loft area. The cabin was a small, approximately 750 square foot residence, and the stairs served a single purpose: access to the loft that Reiser had identified as Hemlock’s private space. (R. 17.) In such a confined residence, spatial function, not formal floorplan labels, determines reasonable expectations of control. A container staged on the stairs leading exclusively to Hemlock’s private loft is not meaningfully different from a container placed just outside the loft itself. Treating the stairs as a neutral “common area” ignores how the space was actually used and understood by the occupants.

As in *Block* and *Salinas-Cano*, those statements disclaimed mutual use and identified items associated with that space as outside her control. The Fourth Amendment does not permit consent to expand, or contract based on interior architecture; a closed container does not lose its constitutional character merely because it rests in a transitional space. The container searched fell squarely within that protected category. The cardboard box was closed, opaque, and unlabeled, and it sat on the stairs leading directly to the loft Reiser had identified as Hemlock’s private space. (R. 13.) Reiser later confirmed that she believed Hemlock left the box there “to bring upstairs

later.” (R. 16.) Under settled Fourth Amendment doctrine, a closed container functionally tied to another occupant’s private storage is not rendered searchable simply because it sits momentarily in a shared passageway. This is especially true where, as here, the special agent had already excluded the loft from the search based on the very same information. Reiser’s consent authorized a search of shared living areas, not a search of Hemlock’s closed container. Opening the box therefore exceeded the scope of consent as a matter of law.

Courts also evaluate the scope of third-party consent through an objective reasonableness lens, asking what a typical officer would have understood the consent to include under the circumstances. *United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002). In *Lemmons*, the court emphasized that consent to search does not automatically authorize the opening of every container encountered, particularly where surrounding circumstances suggest that the container may fall outside the consenter’s control. *Id.* Scope is not determined by silence or proximity, but by whether a reasonable officer would understand the consent to extend to the specific container in light of the information already known. *Id.* As in *Lemmons*, where surrounding circumstances narrowed what a reasonable officer could understand the consent to include, Reiser’s statements here limited the scope of consent before the container was ever encountered.

That principle applies directly here. Reiser’s consent to search the residence was given only after she identified the loft as Hemlock’s storage and office and disclaimed access to that space. (R. 13, 15.) A reasonable officer, aware of those limits, would not have understood her general consent to include a closed, unlabeled container positioned on the stairs leading to that private area. Under *Lemmons*, the absence of an explicit verbal limitation does not expand consent beyond what its scope reasonably encompasses. *Id.* at 924. Opening the box therefore exceeded the scope of Reiser’s third-party consent as a matter of law.

B. When Ownership of a Closed Container Is Objectively Ambiguous, Apparent Authority Fails Unless Officers First Clarify Scope of Consent.

Even when a third-party lacks actual authority over an item, officers may rely on consent only if their belief in the consenter's authority is objectively reasonable. *Rodriguez*, 497 U.S. 177, 188–89 (1990). *Rodriguez* makes clear that apparent authority does not excuse guesswork: when “the surrounding circumstances could conceivably be such that a reasonable person would doubt” the consenter's authority, officers may not proceed “without further inquiry.” *Id.* at 188 Ambiguity is therefore not permission to search; it is a constitutional signal to pause.

Lower courts applying *Rodriguez* have enforced this principle by placing the burden squarely on the law enforcement to resolve uncertainty before intruding on personal effects. In *United States v. Whitfield*, the D.C. Circuit held that the government cannot establish authority where officers, “faced with an ambiguous situation, nevertheless proceed without making further inquiry.” 939 F.2d 1071, 1075 (D.C. Cir. 1991). Apparent authority fails not because officers act in bad faith, but because proceeding without clarification is objectively unreasonable. *Id.*

The ambiguity here was neither subtle nor speculative; it was explicit and acknowledged. Before encountering the box, SA Ristroph asked Reiser about the second floor and was told that the loft was used by Hemlock for “storage and an office,” that Reiser “did not really ever go up there,” and that she did not know what Hemlock kept in that space. (R. 13, 15.) Based on those statements, SA Ristroph himself concluded that Reiser's authority was limited, stating that “because of this comment, I confined the search to the first floor.” (R. 13.) That acknowledgment matters because it reflects the agent's understanding before the search that Reiser's authority was limited and did not extend to areas or effects associated with Hemlock's private space. Yet, when SA Ristroph encountered a closed, opaque, unlabeled box indicating no sign of shared use, resting

on the stairs leading to that same loft, he abandoned that understanding and opened the container without asking a single clarifying question about ownership or use. (R. 13.)

Courts assessing apparent authority over containers examine whether surrounding facts support an inference of mutual use or shared control, and suppress evidence where agents fail to inquire despite signals of personal ownership. In *United States v. Taylor*, officers searched a closed shoebox after obtaining consent to search an apartment, despite surrounding circumstances indicating the container was associated with the defendant's personal effects and despite believing it belonged to him. 600 F.3d 678, 680–81 (6th Cir. 2010). The Sixth Circuit held the search unconstitutional, emphasizing that consent to search premises does not extend to a closed container where ownership is ambiguous, and officers fail to inquire. *Id.* Likewise, in *United States v. Peyton*, officers opened a closed shoebox located near the defendant's sleeping area after the consentor told them the area contained the defendant's personal property. 745 F.3d 546, 553–54 (D.C. Cir. 2014). That statement alone made reliance on consent unreasonable without further inquiry.

Although the containers in *Taylor* and *Peyton* were located near sleeping areas, the constitutional analysis did not turn on proximity to a bed. 600 F.3d at 690; 745 F.3d at 553. It turned on whether officers were on notice that the container was associated with the defendant's personal effects and nevertheless failed to inquire. The same notice existed here. Reiser identified the loft as Hemlock's private storage and office and disclaimed access to that space. (R. 13, 15.) The box was positioned on the stairs leading directly to that loft, functionally linking it to the same private area the agent had already excluded from the search. Location alone cannot override notice of personal control. The Fourth Amendment does not hinge on furniture placement; it hinges on notice of personal control.

The Government's own concession at the suppression hearing confirms the constitutional defect. (R. 37–38.) They conceded that apparent authority would fail if the container were clearly marked as belonging to Hemlock, acknowledging that a co-occupant's consent permits the search only of items that do not obviously belong to another person. (*Id.*) But the Fourth Amendment does not condition constitutional doubt on the presence of a name tag. Once surrounding facts create objective doubt about authority, officers may not proceed simply because exclusivity is not expressly labeled. Here, before the search, Reiser disclaimed access to the loft, lacked knowledge of what Hemlock stored there, and SA Ristroph himself recognized those limits by confining the search to the first floor. (R. 13, 15.) Those facts alone triggered a constitutional duty to inquire, regardless of whether the box bore a name tag.

Because a reasonable officer in SA Ristroph's position would have questioned Reiser's authority over the box and sought clarification before searching, apparent authority fails. Treating ambiguity as authorization would invert the apparent authority doctrine, converting a rule designed to protect privacy into a reward for deliberate silence. Requiring officers to pause and ask a single clarifying question imposes no meaningful burden on law enforcement. It is the least intrusive means of resolving constitutional doubt and preserves the Fourth Amendment's preference for warrants without sacrificing investigatory efficiency. If this search is upheld, officers will be incentivized not to clarify ownership when ambiguity exists, transforming uncertainty into a tool for expanding consent rather than a signal to proceed with constitutional caution. Such a rule would reward deliberate silence, erode the warrant preference, and allow the consent exception to swallow the Fourth Amendment's protection for personal effects. Accordingly, the evidence obtained from the cardboard box must be suppressed.

III. Rule 806 Permits Extrinsic Evidence of Specific Instances of Conduct to Impeach an Unavailable Hearsay Declarant Where Cross-Examination is Impossible and Credibility is Central to the Case.

This Court should reverse the Fourteenth Circuit's holding that the district court committed no legal error or abuse of discretion in excluding extrinsic impeachment evidence. When a party introduces hearsay in place of live testimony, Federal Rule of Evidence 806 governs how the accused may challenge the declarant's credibility. Rule 806 provides that, once a hearsay statement is admitted for its truth, "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.

That ruling must be understood in light of Rule 608(b), which generally prohibits the use of extrinsic evidence to prove specific instances of conduct offered to attack a witness's character for truthfulness, permitting inquiry into such conduct only on cross-examination. FED. R. EVID. 608(b). Rule 608(b) thus presumes the availability of a live witness, one who can be questioned, observed, and asked to explain or deny alleged misconduct. See *United States v. Friedman*, 854 F.2d 535 (2d Cir. 1988). Where that premise fails, rigid application of Rule 608(b) transforms a limitation on impeachment method into a categorical bar on impeachment itself.

The interaction of these rules is critical where, as here, the hearsay declarant, Copperhead, is unavailable and cross-examination is permanently impossible. In that posture, mechanical application of Rule 608(b)'s extrinsic evidence limitation does not merely regulate impeachment; it bars it altogether. The Federal Rules do not permit the Government here to rely on an unavailable declarant's hearsay as substantive evidence while simultaneously invoking Rule 608(b) to bar any meaningful testing of that declarant's credibility. Rule 806 exists precisely to prevent that structural imbalance.

A. Rule 806 Preserves the Functional Equivalent of Cross-Examination When Hearsay Admitted for Its Truth Replaces Live Testimony.

Rule 806 is grounded in a foundational premise of the adversarial system: when an out-of-court statement is admitted for its truth, the declarant assumes the functional role of a witness, and the jury must be afforded a meaningful basis to assess that declarant's credibility. The Rule exists not to expand impeachment, but to preserve equality between live testimony and hearsay by supplying a substitute for cross-examination when cross-examination is unavailable.

Courts have recognized that, once hearsay is admitted for its truth, "the declarant of a hearsay statement is in effect a witness," subject to credibility testing as though she had testified. *State v. Jordan*, 663 N.W.2d 877, 881 (Iowa 2003). Rule 806 thus authorizes what courts have described as a form of "virtual cross-examination," ensuring that credibility remains a live issue for the jury even when the declarant does not take the stand. *Id.* That safeguard is structural, not discretionary; it is the mechanism by which the Evidence Rules prevent hearsay from becoming testimony without accountability.

This case presents Rule 806 in its strongest possible posture. The Government introduced Copperhead's out-of-court statement, "It's all his fault. It was all Atticus's idea, NOT MINE!" as substantive evidence allocating intent and blame. (R. 43.) The district court admitted the statement as an excited utterance under Rule 803(2), expressly relying on Copperhead's emotional state, stating she was "shaking," "crying," and "frenzied," to confer heightened reliability. (R. 42–43.) In doing so, the court invited the jury to credit Copperhead's accusation while simultaneously insulating her from the ordinary tools of credibility assessment.

Yet Copperhead never appeared before the jury. She died while in custody on the night of her arrest, rendering cross-examination not merely impractical, but permanently impossible. (R. 46.) The Government's sole witness, Kolber, had never met Copperhead before, observed her for

approximately thirty seconds, and conceded that he had no basis to assess her credibility. (R. 45–46.) Copperhead thus functionally testified without ever appearing, while the jury was left with no ordinary means to evaluate whether her accusation was truthful.

Rule 806 exists to prevent precisely that credibility vacuum. As the court explained in *State v. Martisko*, when the prosecution relies on hearsay from a non-testifying declarant, the defendant must be afforded a meaningful opportunity to impeach that declarant’s credibility, particularly when the hearsay forms a significant part of the State’s case. 211 W. Va. 387, 394 (2002). Otherwise, hearsay becomes immune from adversarial testing, and the jury is forced to accept the declarant’s version of events at face value. *Id.* The Fourteenth Circuit itself acknowledged that Copperhead’s statement “constituted a crucial component of the Government’s case,” confirming that credibility was central, not collateral. (R. 57.)

Courts applying Rule 806 have recognized that its protections must be meaningful, not illusory. In *United States v. Uvino*, the court permitted extrinsic impeachment of unavailable hearsay declarants because, where confrontation is barred, such evidence may be “the only means” by which credibility can be tested at all. 590 F. Supp. 2d 372, 374 (E.D.N.Y. 2008). The court emphasized that Rule 806 must operate as a practical mechanism for truth testing, not a formal entitlement without content. *Id.* That principle applies with maximum force where, as here, the hearsay accusation allocates criminal intent and the declarant is permanently unavailable.

The impeachment proffered here fits squarely within Rule 806’s purpose. Hemlock sought to introduce two narrow, institutional findings directly probative of Copperhead’s truthfulness: a formal Academic Integrity Board determination that she fabricated sources and quotations in a required capstone assignment, and a verified job application falsely claiming a bachelor’s degree she never earned. (R. 9, 10.) Both involved deliberate misrepresentation for personal benefit. (*Id.*)

Both were documented, adjudicated, and readily provable through limited custodial witnesses. (R. 47, 48.) Both bore directly on whether the jury should credit Copperhead's blame-shifting accusation.

Absent such impeachment, the jury heard an emotionally charged, self-exculpatory accusation, admitted for its truth and cloaked in the reliability of Rule 803(2), without any meaningful basis to assess the declarant's credibility. Rule 806 was enacted to prevent that result. When hearsay replaces live testimony, the Rule demands a functional substitute for cross-examination.

B. Mechanically Applying Rule 608(b)'s Extrinsic-Evidence Limitation When the Declarant is Unavailable Would Nullify Rule 806 and Create a Structural Imbalance in Favor of the Government.

Rule 608(b)'s prohibition on extrinsic evidence rests on a premise absent here: the availability of a live witness subject to cross-examination. The Rule permits inquiry into specific instances of conduct only "on cross-examination," presuming that that credibility may be tested through questioning, observation of demeanor, and the witness's opportunity to explain or deny alleged misconduct. FED. R. EVID. 608(b). While Rule 608(b) limits extrinsic proof of general character for truthfulness, courts have long distinguished such attacks from evidence revealing bias, motive, or self-interest, particularly where credibility cannot otherwise be tested. When the hearsay declarant is unavailable, the premise underlying Rule 608(b) collapses.

Courts interpreting Rule 806 have recognized that this result is impermissible. Once hearsay is admitted for its truth, "the declarant of a hearsay statement is in effect a witness," and must be treated as such for credibility purposes. *State v. Jordan*, 663 at 881. That principle is structural. Rule 806 exists to prevent hearsay from becoming a substitute for testimony stripped of

the safeguards that testimony ordinarily carries. *Id.* Where the declarant cannot be cross-examined, the Rules must still supply a meaningful mechanism for credibility testing.

The Second Circuit’s decision in *Friedman* illustrates the governing inquiry. 854 F.2d at 570. There, the government introduced hearsay statements of a non-testifying declarant who later died, and the defendant sought to impeach the declarant under Rule 806 with extrinsic evidence that the declarant had lied to law enforcement. The court affirmed exclusion not because extrinsic impeachment was categorically barred, but because the misconduct bore no meaningful relationship to the credibility of the specific hearsay statements admitted. *Id.* at 570–71. In so holding, the court emphasized that Rule 806 applies precisely “when the declarant has not testified and there has by definition been no cross-examination,” acknowledging that extrinsic evidence may, in some cases, be “the only means” of presenting credibility evidence to the jury. *Id.* at 570.

This case is the opposite of *Friedman*. Copperhead’s hearsay statement was self-exculpatory and explicitly blame-shifting, “It was all Atticus’s idea, NOT MINE!”—and constituted a central component of the Government’s theory of guilt. (R. 43, 57.) The impeachment evidence Hemlock sought to introduce was neither collateral nor speculative. It consisted of two documented, institutional findings of deliberate dishonesty: a formal Academic Integrity Board determination that Copperhead fabricated sources and quotations, and a verified job application falsely claiming a bachelor’s degree she never earned. (R. 9–10, 47–48.) Both were adjudicated, documented, and readily provable through limited custodial witnesses with no connection to the underlying events. Admission of such evidence would not have devolved into a collateral mini trial but would have required only straightforward authentication. Unlike *Friedman*, where the excluded misconduct had little relationship on the truth of the statements admitted, Copperhead’s

pattern of intentional deception goes directly to whether the jury should credit her accusation. 854 F.2d at 570.

The Government's reliance on cases such as *United States v. Saada* and *United States v. Andrade* does not compel a different result. 212 F.3d 210, 221–22 (3d Cir. 2000); No. 20-cr-00249-RS-1, 2025 WL 670456, at *4 (N.D. Cal. Mar. 3, 2025). Those decisions rest on the assumption that alternative credibility testing mechanisms remain available. In *Saada*, the Third Circuit upheld limits on impeachment only because other avenues remained open, and it expressly cautioned against applying Rule 806 in a manner that “renders impeachment hollow.” 212 F.3d at 221–22. Similarly, *Andrade* affirmed exclusion where credibility could still be evaluated through contextual contradictions and other evidence. 2025 WL 670456, at *4. Neither case involved a record in which the trial court barred not only documents, but “any testimony related to these documents or the underlying incidents” eliminating every meaningful avenue of impeachment. (R. 50.) Furthermore, here, that assumption collapses. The sole witness through whom Copperhead's statement was introduced had never met her before, observed her for approximately thirty seconds, and conceded that he had no basis to assess her credibility. (R. 45–46.) As a result, reputation or opinion testimony under Rule 608(a), inquiry into specific instances on cross-examination under Rule 608(b), and prior inconsistent statements under Rule 613 were all functionally unavailable.

This total exclusion created a structural asymmetry. A live witness may be questioned about specific acts bearing on truthfulness. Under the ruling below, however, an unavailable declarant whose statement is admitted for its truth enjoys greater insulation from credibility testing than a witness who takes the stand. That inversion makes hearsay more powerful than testimony, an outcome the Evidence Rules do not tolerate.

As this Court cautioned in *Chambers v. Mississippi*, evidentiary rules may not be applied “mechanistically” when doing so undermines the truth finding function of trial and deprives the accused of a meaningful opportunity to challenge the evidence against him. 410 U.S. 284, 302 (1973). Rule 806 exists as the Rules’ safety valve, ensuring that when hearsay replaces live testimony, credibility does not vanish from the trial. *Id.* Applied without regard to declarant unavailability, Rule 608(b) drains that safeguard of content. The Court can resolve this case on narrow grounds by holding that when a party introduces substantive, blame-shifting hearsay from an unavailable declarant, Rule 806 must permit tightly bounded impeachment necessary to prevent credibility from becoming immune to adversarial testing.

CONCLUSION

For the foregoing reasons, the judgment of the Fourteenth Court of Appeals should be REVERSED.

Respectfully Submitted,
/s/ Team 7P
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