Team T17P

No. 25-7373

IN THE

SUPREME COURT OF THE UNITED STATES

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

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

BRIEF FOR PETITIONER

Team T17
Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether, under *Payton v. New York*, the Fourth Amendment permits the Government to circumvent the warrant requirement solely by remaining physically outside the home, when their conduct is designed to force a person to step outside his home so the Government can effectuate a warrantless arrest.

II. Whether the Government can avoid a Fourth Amendment violation by claiming a co-occupant had apparent authority to consent to a warrantless search of a closed, unmarked container when the co-occupant did not reasonably have authority over the area where the box was found and, moreover, limited the scope of their consent to exclude the area where the box was located.

III. Whether, when a hearsay declarant is unavailable to testify and there are no other opportunities to impeach their character for truthfulness, Rule 806 authorizes introducing extrinsic evidence of the specific instances of conduct that Rule 608(b) allows counsel to inquire into on cross-examination for impeachment purposes when the conduct is directly probative of the credibility of the admitted statement.

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The judgment of the United States Court of Appeals for the Fourteenth Circuit, *Atticus Hemlock v. United States of America*, No. 24-1833, was entered on April 14, 2025, and may be found in the Record. (R. 51-61).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of the relevant constitutional provision is provided below. The relevant statutory provisions include 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d).

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

STATEMENT OF THE CASE

I. Statement of Facts

Atticus Hemlock ("Mr. Hemlock") lived in a small cabin on a farmer's property with his girlfriend, Fiona Reiser ("Reiser"). (R. 52). The cabin was in a densely wooded area and near a walking path in the Joralemon State Park. (R. 52). Around 4:00 p.m. on April 2, 2024, while Mr. Hemlock was waiting for Reiser to return home and preparing to host a friend, Iris Copperhead ("Copperhead") for dinner, two FBI agents showed up unannounced at his home in an unmarked vehicle. (R. 11).

Upon arrival, Special Agents Hugo Herman ("Herman") and Ava Simonson ("Simonson") loudly knocked on the door. (R. 11). Mr. Hemlock came to the door and spoke to the agents through his screen door. (R. 21). Simonson said they were conducting an investigation, however, did not say who or what they were investigating. (R. 11). Simonson only disclosed that they

thought Mr. Hemlock had useful information and asked him to come outside. (R. 11). Mr. Hemlock asked if he could decline, stating that he was busy, unsure how he would be of any help, and that the agents "freak [him] out." (R. 11). Simonson ignored his question, instead reiterating their desire to get information for their investigation and, again, requested Mr. Hemlock to leave his home. (R. 11). Mr. Hemlock replied that he felt "pretty uneasy" about talking with them and again asked what was going on. (R. 11).

Herman ignored this question, stepped closer to the cabin, peered inside, and questioned Mr. Hemlock about bottles that appeared to be chloroform. (R. 11). Then, in quick succession, the agents demanded Mr. Hemlock to leave his home for a third and fourth time. (R. 11). Mr. Hemlock reiterated that he did not want to come outside and wanted the agents to leave him alone. (R. 11). After Herman demanded he calm down, Mr. Hemlock again asked what the encounter was about. (R. 11). Herman again ignored the question, instead stating that the agents could come back later to talk, if that would be better. (R. 12). Mr. Hemlock unambiguously declined by stating that he did not "want anything to do with [the agents]." (R. 12).

The two agents then went back to their car to strategize next steps. (R. 12). Simonson acknowledged that Mr. Hemlock "clearly does not want to talk" with them, but the two agents agreed that they likely now had probable cause. (R. 12). Then, Simonson said, "Let's go back. We'll get him to come outside and then we'll arrest him." (R. 12). Simonson called Special Agent Kiernan Ristroph ("Ristroph") to come to the house in case the two agents needed back-up. (R. 12). The two agents then reapproached the house, placed their hands on top of their guns, and demanded Mr. Hemlock to leave his house. (R. 12, 26). Herman did this "in case [he] needed to use it," noting it would be a "pretty intimidating thing to see." (R. 26). Mr. Hemlock immediately acquiesced, saying, "Oh god, uh, okay, okay. I'll come out." (R. 12). Once Mr.

Hemlock left his home and reached the ground, the agents placed him under arrest and searched him. (R. 12). The agents found Mr. Hemlock's diary in his pants pocket. (R. 5, 12, 23).

Ristroph arrived after the agents had already arrested Mr. Hemlock. (R. 12). Herman informed Ristroph that Mr. Hemlock's girlfriend, Reiser, would be home soon and told him to wait down the road until she returned, so Ristroph could get a consent search of the cabin. (R. 12). Once Reiser returned home, Ristroph knocked on the cabin door. (R. 13). Reiser answered the door, Ristroph told her that Mr. Hemlock had been arrested and asked to search the cabin. (R. 15). Ristroph ignored Reiser's questions about why Mr. Hemlock was arrested or what he would be searching for in the cabin, only stating that it was part of an ongoing investigation. (R. 15). Reiser still allowed Ristroph inside. (R. 15).

Ristroph began his search in the kitchen and living room, before noticing the nook where the stairs were. (R. 15). Reiser stated that Ristroph asked her if she slept upstairs, to which she informed him that they slept in the back of the home, not upstairs, and she pointed him to the bedroom located next to the kitchen. (R. 15). She further stated that the stairs led to the loft, which only Mr. Hemlock used as storage and office space. (R. 15). Ristroph, however, alleges that he asked Reiser what was on the second floor, she replied that they used it for storage and an office space, and because of that comment he "confined the search to the first floor." (R. 13). Upon hearing Reiser's response to what was upstairs, Ristroph went directly over to the stairs and opened an unmarked cardboard box sitting on the stairs (R. 16). Reiser believed that Mr. Hemlock left the box on the stairs to bring upstairs later. (R. 16). As such, she had not seen the items in the cardboard box before, stating that it "looked like outdoor gear that Atticus and Iris would use for their outdoor excursions." (R. 16). Ristroph declared the box and its contents was evidence in the investigation and left the cabin with it without searching anywhere else. (R. 16).

While Mr. Hemlock was being arrested and searched, Copperhead was secretly observing. (R. 53). Unsettled and afraid of what Mr. Hemlock's arrest meant for her, Copperhead ran away from the house to Joralemon State Park. (R. 53). She came "bursting out of the woods" on to the park's walking path, where she encountered Thoedore Kolber ("Kolber") – a Boreum Village resident. (R. 41). Though Kolber did not know who she was, upon seeing Copperhead crying and shaking, he immediately asked her what was wrong and if she was okay. (R. 42-43). Kolber could hardly get the words out before Copperhead yelled, seemingly "out to the world," "I can't believe I saw him get arrested. It's all his fault. It was all Atticus' idea – NOT MINE! I can't run a business from prison!" (R. 43). Before Kolber could ask further questions, Copperhead "ran off" towards the parking lot. (R. 44). That evening, Copperhead was arrested and taken into custody where she suffered a fatal acute aortic rupture. (R. 53).

The following morning, on April 3, 2024, Kolber recognized Copperhead's mugshot in the local newspaper and learned – for the first time – her name, and of her alleged involvement in the kidnapping plot. (R. 45). Realizing what he had heard in the park may be relevant to the investigation, Kolber reported the encounter to law enforcement. (R. 45). This was, however, the only information he could provide regarding Copperhead because he had never met her and did not know "anything about her personal life" or her reputation among neighbors, friends, or teachers. (R. 45-46). Copperhead's death was the only other piece of information that Mr. Kolber ever came to learn about her. (R. 46).

II. Procedural History

Mr. Hemlock was charged with attempted kidnapping of an officer of the United States government on account of the officer's official duties under 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d). (R. 53). Prior to trial, Mr. Hemlock moved for the Northern District of Boerum

to suppress two pieces of evidence: (1) his diary that was seized during his arrest; and (2) materials seized from Mr. Hemlock's closed cardboard box. (R. 53-54). The District Court denied both motions. (R. 54). Furthermore, at Mr. Hemlock's trial on August 6, 2024, the government called Kolber as a witness to testify about his encounter with Copperhead in the park, and the contents of her statement. (R. 40-41). Overruling Mr. Hemlock's hearsay objection pursuant to the exception for excided utterances under Federal Rule of Evidence 803(2), the trial court admitted Copperhead's statement into evidence. (R. 43).

In a necessary attempt to cast doubt upon Copperhead's credibility, Mr. Hemlock first sought to call a member of the Court Street College Board of Academic Integrity to provide testimony about an academic integrity violation that Copperhead committed while attending the college. (R. 47). On April 20, 2023, Copperhead was sanctioned with a failing grade for impermissibly using Artificial Intelligence to complete her Business Entrepreneurship Senior Capstone assignment. (R. 9). Copperhead's submission included several fake sources and "elevated vocabulary" inconsistent with her previous quality of writing. (R. 9). Because the class was required for completion of her major, the failing grade prevented Copperhead from successfully graduating. (R. 9-10).

Mr. Hemlock further sought to call Svetlana Ressler ("Ressler"), Chief of Human Resources for the Boreum Village Mayor's Office, to testify about a fraudulent job application Copperhead submitted. (R. 48-49). Months after Copperhead's academic integrity violation, on January 2, 2024, she applied to be the Executive Assistant to the Mayor. (R. 10). The position required applicants hold a bachelor's degree, and Copperhead falsely reported that she earned her B.A. – specifically stating that "[s]ince graduating from Court Street College in May 2023, I have been eager to apply my major of entrepreneurship and my interest in political engagement,

in my hometown of Boreum Village." (R. 10). Upon calling the college to confirm Copperhead's graduation date, Ressler learned that she never graduated and denied her application. (R. 10).

The trial court sustained the government's objection, prohibiting Mr. Hemlock from introducing any of the available evidence to impeach Copperhead's character for truthfulness. (R. 50). At the conclusion of his jury trial, Mr. Hemlock was found guilty of attempted kidnapping of an officer of the United States government and sentenced to ten years in prison. (R. 54) The Fourteenth Circuit later affirmed each of the trial court's conclusions on April 14, 2025. (R. 58). Mr. Hemlock then appealed to this Court and was granted certiorari on all three issues on December 2, 2025. (R. 64).

SUMMARY OF THE ARGUMENT

This Court should reverse the Fourteenth Circuit's decision to admit Mr. Hemlock's diary obtained subsequent to his warrantless arrest and instead find that Mr. Hemlock's Fourth Amendment rights were violated when Herman and Simonson coerced him out of his home to effectuate his warrantless arrest. Despite this Court's Fourth Amendment jurisprudence, the Fourteenth Circuit erroneously interpreted the "firm line" in *Payton v. New York* to limit Fourth Amendment protections to only physical intrusions into the home by the Government. However, to uphold the longstanding protections afforded by the Fourth Amendment, this "firm line" must also shield individuals from the Government circumventing the warrant requirement by coercing people out of their home. Thus, Herman and Simonson constructively entered Mr. Hemlock's home when they engaged in coercive tactics that left him with no option but to submit to their authority from inside his home. As such, Mr. Hemlock's warrantless arrest inside of his home violated his Fourth Amendment right to be free from unreasonable seizures.

Additionally, the Fourteenth Circuit erred when it determined that Reiser had apparent authority to consent to a search of Mr. Hemlock's closed cardboard box. Apparent authority is determined by surrounding circumstances and whether a reasonable person would believe that the consenting party had authority. Here, Reiser made it clear that she did not have authority to consent to a search of the stairs where the box was located by stating that the loft was dedicated to Mr. Hemlock. Moreover, regardless of whether she had apparent authority, she verbally and physically limited to scope of her consent to exclude the stairs. Thus, Ristroph should not have gone over to explore the stairs, let alone open Mr. Hemlock's closed cardboard box.

Finally, the Fourteenth Circuit should have permitted extrinsic evidence of Copperhead's academic dishonesty violation and falsified job application pursuant to Federal Rule of Evidence 806. Because live witnesses can be impeached by inquiries into prior bad acts on cross-examination, such misconduct must also be available to impeach Copperhead. Moreover, both instances of Copperhead's misconduct directly undermine the reliability of her statement and justifiably place her character for truthfulness at issue for the jury. Mr. Hemlock is already at an inherent disadvantage given that Copperhead cannot be subject to cross-examination, and without the ability to introduce evidence of these incidents, he is effectively barred from attacking her credibility entirely. Prohibiting this evidence would deprive Mr. Hemlock of any meaningful opportunity to challenge the reliability of the government's evidence.

ARGUMENT

I. Law enforcement's coercive tactics forcing a person to leave his home to warrantlessly arrest him violates the Fourth Amendment right to be free from unreasonable seizures.

This Court should reverse the Fourteenth Circuit's decision to admit the notebook seized by law enforcement incident to Atticus Hemlock's ("Mr. Hemlock") arrest because it misinterpreted

Payton v. New York in concluding that the Fourth Amendment right to be free from unreasonable seizures inside the home is limited to physical entrance by law enforcement. (R. 54). The Fourth Amendment protects "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV.

This Court has "refused to lock the Fourth Amendment into instances of actual physical trespass." *United States v. United States District Court*, 407 U.S. 297, 313 (1972). Instead, a person has been "seized" when their freedom of movement has been restrained, either by application of physical force or submission to an officer's show of authority. *California v. Hodari D.*, 499 U.S. 621, 626 (1991). Moreover, the protections of the Fourth Amendment have been most clearly defined by the physical boundary of one's home and, absent exigent circumstances, law enforcement may not intrude an individual's home to effectuate a warrantless arrest. *Payton v. New York*, 445 U.S. 573, 589-90 (1980). As such, where law enforcement forces a person to step outside without physically entering the home, they have made a warrantless, constructive entry into the home, thereby violating *Payton*. *United States v. Gori*, 230 F.3d 44, 62 (2d Cir. 2000) (Sotomayor, J., dissenting). Because law enforcement's coercive tactics forced Mr. Hemlock to leave the physical confines of his home, this Court should find that Mr. Hemlock's Fourth Amendment right to be free from unreasonable seizures was abridged by law enforcement's constructive entry into his home to warrantless arrest him.

A. The *Payton* restriction on warrantless in-home arrests, when considered in tandem with this Court's Fourth Amendment jurisprudence, was not intended to be limited to physical trespass by law enforcement.

Given that the protections of the Fourth Amendment have not been confined to physical intrusions by law enforcement, it is illogical to conclude that *Payton* was intended to only protect against physical intrusions of one's home. *See United States District Court*, 407 U.S. at 313. This

Court should therefore uphold its Fourth Amendment jurisprudence by finding that *Payton* is meant to protect the rights of the person inside the home, rather than the mere physical intrusion of the home itself. *See Katz v. United States*, 389 U.S. 346, 353 (1967).

1. Based on the Fourth Amendment's preexisting protections, *Payton*'s "firm line" could not limit these protections against unreasonable governmental intrusions into the home to only physical intrusions.

The "firm line" illustrated in *Payton* could not and did not limit the Fourth Amendment's preexisting protections against unreasonable governmental intrusions into a person's home only to physical intrusions. The Fourth Amendment guarantees individuals, not places, the right to be free from unreasonable searches and seizures. *Katz*, 389 U.S. at 353. However, since its inception, the Fourth Amendment has provided heightened protections with respect to a person's home and their right to remain free from unreasonable governmental intrusion therein. *Silverman v. United States*, 365 U.S. 505, 511 (1961). Accordingly, this Court has maintained that the "Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590.

This "firm line," however, has required further delineation to clarify under what circumstances law enforcement has crossed it. *See Kyllo v. United States*, 533 U.S. 27, 40 (2001). In drawing these boundaries, the Fourth Amendment cannot be viewed in isolation, but rather, from its "original meaning forward." *Id*. More specifically, "[t]he Fourth Amendment is to be construed in light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." *Carroll v. United States*, 267 U.S. 132, 149 (1925). This approach was necessary in *Kyllo*, where law enforcement, located physically outside a person's home, utilized

thermal imagers to scan inside the home to collect enough information to secure a warrant. *Kyllo*, 533 U.S. at 30. Thus, even though law enforcement remained outside of the home, this Court concluded that *Payton*'s "firm line" was crossed by law enforcement's use of technology, reasoning that law enforcement learned intimate information about a home that otherwise would have been "unknowable without physical intrusion." *Id.* at 40.

Moreover, even prior to *Payton*'s distinction at the threshold of the home, Fourth Amendment rights were not tied to physical trespass of a structure. In *Silverman*, this Court plainly rejected the concept of determining Fourth Amendment rights based solely on property. 365 U.S. at 511. ("Inherent Fourth Amendment rights are not inevitably measurable in terms of ancient niceties of tort or property law."). Then, in *Katz*, this Court emphasized the Fourth Amendment's protections are for people, not just places. 389 U.S. at 353. ("once it is acknowledged that the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure."). Thus, holding that *Payton*'s firm line is limited to physical intrusion by law enforcement would directly oppose this Court's Fourth Amendment jurisprudence.

2. Clarifying *Payton* to protect against constructive entry by law enforcement aligns with Fourth Amendment protections against unreasonable seizures.

Interpreting *Payton* to include constructive entry as an impermissible intrusion into a person's home to effectuate a warrantless arrest aligns with the Fourth Amendment meaning of a seizure. A person has been "seized" when their freedom of movement is restrained, such that "a reasonable person would have believed that he was not free to leave," regardless of whether an officer physically contacted the person. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). This inquiry must be refined when the person's ability to leave does not align with the persons

desire to "disregard the questions." *Id*. Under those circumstances, such as when officers are outside a person's home, the question becomes whether "a reasonable person would feel free to decline the officers' requests." *Florida v. Bostick*, 501 U.S. 429, 436 (1991).

Additionally, to limit the definition of a "seizure" based on where the encounter took place is inapposite. *Bostick*, 501 U.S. at 437. This Court plainly rejected as much in *Bostick* by reversing the Florida's Supreme Court's conclusion that no seizure took place simply because the person's encounter with the police took place on a moving bus. *Id*. Instead, in determining whether there was a seizure, courts must evaluate the totality of the circumstances, including where the encounter occurs. *Id*. Thus, given that the home is "first among equals" under the Fourth Amendment, it logically follows that the occurrence of an in-home seizure cannot be determined solely by whether law enforcement physically crossed the home's threshold under a totality of the circumstances analysis. *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

Moreover, this Court has already provided a relevant, non-exhaustive list of situations that could be considered seizures absent physical trespass by officers: "the threatening presence of several officers, the display of a weapon by an officer . . . or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 544. Importantly, this Court again did not limit these situations by location; instead, these situations could indicate a seizure of a person regardless of where they occur. *See id*. Thus, the Fourteenth Circuit's claim that there is "no rule, let alone a clear one, to guide district courts in deciding whether or not an encounter with law enforcement was sufficiently coercive to trigger a Fourth Amendment violation," is wholly improper. (R. 55). As such, the constructive entry doctrine not only aligns with this Court's holding in *Payton* but already has its foundation in Fourth Amendment jurisprudence.

B. Law enforcement constructively entered and warrantlessly arrested Mr. Hemlock inside his home when they coerced him outside.

The Fourteenth Circuit erred when it held that law enforcement's warrantless arrest of Mr. Hemlock did not violate his Fourth Amendment rights because Mr. Hemlock was placed under arrest while still within his home. (R. 55). While *Payton* draws a "firm line" at the threshold of the home, it does not limit its protection only to physical intrusion, nor usurp the definition of a "seizure" for Fourth Amendment purposes. *See Payton*, 445 U.S. at 590; *Hodari D.*, 499 U.S. at 626. Moreover, the Fourth Amendment demands compliance with judicial process. *United States v. Jeffers*, 342 U.S. 48, 51 (1951). Here, the agents constructively entered Mr. Hemlock's home to effectuate his arrest because, while they did not physically enter, their coercive tactics forced Mr. Hemlock to submit to their authority and step outside. As such, the agents disregarded the Fourth Amendment's warrant process and the crucial protection it provides.

1. Agents Herman and Simonson's coercive tactics forcing Mr. Hemlock to step outside and submit to their authority had the same effect as physically entering his home and placing him under arrest.

When Agents Herman and Simonson engaged in coercive tactics to force Mr. Hemlock to leave his home and submit to their authority, it had the same effect as if they physically entered his home to arrest him. A lack of physical entry to a home is not dispositive to determine whether *Payton* has been violated when there is coercive conduct from law enforcement. *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989). In *Maez*, law enforcement, while investigating a bank robbery, met before going to Maez' home to plan his warrantless arrest. *Id*. at 1447-48. Law enforcement then surrounded Maez' home, pointed rifles at the house, and requested over loudspeakers that the occupants of the home come outside. *Id*. at 1448. Although Maez was placed in handcuffs outside the physical confines of his home, the Tenth Circuit nonetheless found that *Payton* was violated because police's tactics were designed to and did

coerce him to leave his home, thus effectively invading the privacy of the home when he submitted to being taken into custody. *Id*. at 1451.

Importantly, courts recognizing the constructive entry doctrine evaluate whether, under the circumstances, a person would believe they were free to leave. *See e.g., United States v. Saari*, 272 F.3d 804, 808 (6th Cir. 2001); *Maez*, 872 F.2d at 1450. For example, in *Saari*, the Sixth Circuit considered four officers' conduct while investigating a falsified "shots fired" allegation. 272 F.3d at 806. The officers positioned themselves outside of the only door to the suspect's apartment with their weapons drawn. *Id.* They knocked on the door, announced they were the police, and, once the suspect opened his door, instructed him to come outside. *Id.* at 807. The circuit court concluded, based in part on this Court's *Mendenhall* framework, that a reasonable person would not have believed they were free to leave under these circumstances *Id.* at 807-08. Moreover, the officers' desire to interview the suspect did not justify ordering him out of his home at gunpoint or constitute an exigent circumstance to excuse their warrantless entry into the apartment. *Id.* Accordingly, the officers' actions were a constructive in-home arrest effected without a warrant nor exigent circumstances, thus violated the Fourth Amendment. *Id*. at 810.

Additionally, the rationale behind some circuit courts' decision to not recognize the constructive entry doctrine is instructive. *See Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002); *United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991). In *Knight*, one officer was investigating a woman's report that her ex-boyfriend threatened to kill her, in addition to other conduct that required her to file criminal charges. *Id.* at 1274. The officer went to the man's home and knocked on the door. *Id.* After the man answered the door, the officer asked what he was doing, to which the man replied, "I am in here, can I help you?" *Id.* at 1277. The officer told the man to step outside, which he did without protest, and then the officer handcuffed the man

and put him in the police car. *Id.* The Eleventh Circuit determined that *Payton* was not violated because one officer merely telling a suspect to step outside his home and warrantlessly arresting him does not cross the "firm line" of *Payton*. *Id*; *see also Berkowitz*, 927 F.2d at 1387 (finding no *Payton* violation where law enforcement only uses voice to convey message to suspect).

In this case, the "firm line" of *Payton* was crossed through the agents' actions, despite physically remaining outside. The fact that Herman and Simonson did not physically cross into Mr. Hemlock's home is of no consequence, as their conduct allowed them to control Mr. Hemlock inside his own home. (R. 11-12, 21). Mr. Hemlock was able to talk with the agents through his screen door: declining to come outside multiple times, explaining that he was "uneasy" speaking with them, and stating that he wanted "nothing to do with" the agents now or later. (R. 11). The agents recognized that Mr. Hemlock did not want to talk to them, so they planned to "get him to come outside and then [they'll] arrest him." (R. 11-12). Accordingly, the agents went back to Mr. Hemlock's home, visibly placed their hands on top of their guns, and demanded Mr. Hemlock to come outside. (R. 12). Mr. Hemlock stated "[o]h god, uh, okay, okay. I'll come out." (R. 12, 26). Immediately upon leaving the safety of his front porch, Simonson placed him under arrest. (R. 12). Thus, like *Maez*, where the officers never needed to cross the threshold of the home to place the suspect under arrest because they could control his movements from outside, the agents here also effectuated a warrantless arrest by controlling Mr. Hemlock from just beyond the threshold of his home.

Additionally, the stark contrast in the agents' behavior between their two interactions with Mr. Hemlock demonstrates how the agents were coercive, forcing Mr. Hemlock to feel he was not free to leave or disregard the agents' commands. (R. 11-12, 20-26). When the agents first arrived, Simonson explained that they were with the FBI and asked Mr. Hemlock to come

outside because they had some questions for him. (R. 11). After he declined, Simonson reiterated with "[p]lease come outside for us." (R. 11). Once Mr. Hemlock made it clear that he had no interest in going outside and did not want the agents to come back later to talk, the agents went to their car. (R. 12). The agents acknowledged that he "clearly does not want to talk" to them but decided they would "get him to come outside and then [they would] arrest him." (R. 12). Before heading back to Mr. Hemlock's home, they called Agent Ristroph in case they needed back-up in getting Mr. Hemlock out of the house. (R. 12). When they reapproached the home, the agents put their hands on top of their guns, which Herman said was "in case [he] needed to use it," and acknowledged that this would be "pretty intimidating thing to see." (R. 26). The agents shouted at Mr. Hemlock to come outside immediately, which, upon seeing the agents, he acquiesced, thus leaving the safety of his home. (R. 12). Therefore, just as in *Saari* where the officers conduct gave the suspect no choice but to comply, the agents' coercive behavior left Mr. Hemlock no option but to follow their instructions, even though he was within his own home.

Finally, unlike the suspect in *Knight* who immediately stepped outside of his home upon an officer's request, Mr. Hemlock repeatedly expressed his unwillingness to leave his home. (R. 11-12). The suspect in *Knight* did not question why he was requested to come outside, whereas here, Mr. Hemlock asked multiple times what the agents wanted from him but received no response. (R. 11-12). Moreover, Mr. Hemlock had two agents return to his home with their hands on their guns, demanding him outside, unlike *Knight*, where no weapon was displayed during the first and only encounter between the suspect and the officer. (R. 12, 26). Thus, whereas constructive entry was not necessary for the officer in *Knight* to warrantlessly arrest the suspect, here, the agents needed to resort to constructive entry to warrantlessly arrest Mr. Hemlock.

2. Without the constructive entry doctrine, Agents Herman and Simonson effectively circumvented the warrant process to effectuate an in-home arrest.

Ignoring the constructive entry doctrine would allow law enforcement to circumvent the warrant process and the critical judicial oversight that it provides at the expense of people's constitutional rights. The warrant requirement is necessary to ensure that the impartial judgment of a judicial officer stands between a citizen and law enforcement. *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963). This Court has already provided guidance for when law enforcement may dispense with the warrant requirement: only where exigent circumstances exist. *Minnesota v. Olson,* 495 U.S. 91, 100 (1990). Here, given that there were no exigent circumstances, allowing the warrantless in-home arrest of Mr. Hemlock to stand would disrupt the crucial protections provided by the warrant process.

Recognizing the constructive entry doctrine does not create any safety concerns for law enforcement. *Saari*, 272 F.3d at 811. The Sixth Circuit in *Saari* addressed this concern, noting that the constructive entry doctrine does not displace any of the current warrant exceptions. *Id.* The officers in *Saari* eventually went to a suspect's apartment during their investigation after being informed that the person was "armed at all times." *Id.* at 806. Before knocking on the door, the officers staggered themselves in front of the door with their guns ready. *Id*. The officers then coerced the suspect to leave the physical confines of his home, thus constructively entering his home to effectuate a warrantless arrest. *Id.* at 808. The circuit court explained that no exigent circumstances justified this arrest and the officers had time to get a warrant, at which time they would have been able to take all necessary precautions. *Id.* at 811. The Sixth Circuit further explained that if there were exigent circumstances, the officers would still have been permitted to effect an immediate arrest and utilize all necessary precautions. *Id.* at 812.

In this case, since there were no exigent circumstances, Herman and Simonson were not entitled to dispense with the warrant requirement. Herman and Simonson went to Mr. Hemlock's home to talk to him as part of their investigation without any plans to arrest him. (R. 20-21). During their first encounter, Mr. Hemlock expressed to the agents how he did not want to talk with them, as he was waiting for his girlfriend to return home and the two of them were hosting a friend for dinner; in other words, he was not going anywhere. (R. 11). The agents retreated to their vehicle to come up with a plan, during which time there was no observation of Mr. Hemlock trying to flee. (*See* R. 12, 22-26). The agents called for backup before effectuating their warrantless in-home arrest. (R. 12, 23). Just as the Sixth Circuit found that the officers in *Saari* had time to obtain a warrant, so too should have the Fourteenth Circuit in this case. It was apparent that Mr. Hemlock was not leaving the house in the immediate future; however, if that was the agents' concern, they still could have called for backup and simply assigned Agent Ristroph to remain outside the residence to ensure that Mr. Hemlock did not leave the area while they obtained a warrant. Accordingly, this Court should reverse the Fourteenth Circuit and hold that the notebook seized incident to Mr. Hemlock's arrest was improperly admitted at trial.

II. Law enforcement further violated Petitioner's Fourth Amendment rights by rummaging through his closed container inside his home without a warrant or consent.

Special Agent Kiernan Ristroph ("Ristroph") violated Mr. Hemlock's Fourth Amendment rights when he searched through Mr. Hemlock's closed cardboard box inside his home without a warrant or valid consent. As such, the box and its contents should have been suppressed at trial.

The Fourth Amendment guarantees that no person, their effects, or their home will be subject to an unreasonable search. *Illinois v. Rodriguez*, 487 U.S. 177, 183 (1990). Absent a warrant or exigent circumstances, the government may only conduct a search based on voluntary consent provided by: (1) the individual whose property is being searched; (2) a third party who possesses

common authority over the premises or effect; or (3) a third party who possesses "apparent authority" over the premises or effect. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973); *United States v. Matlock*, 415 U.S. 164, 171 (1974); *Rodriguez*, 497 U.S. at 186. The scope of this consent, however, may be limited by evaluating what a "typical reasonable person" would have understood it to be. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

Here, Ristroph violated Mr. Hemlock's constitutional rights by searching the cardboard box. First, Fiona Reiser ("Reiser") had no apparent authority to consent to a search of Mr. Hemlock's spaces within the home, including where Ristroph found the box. Even if ownership of the box was, at best, ambiguous, Ristroph should have inquired into its ownership prior to opening it. Second, even if Reiser did have apparent authority to consent to the search of the area where the box was found, she limited the scope of her consent to exclude this area. Therefore, this Court should reverse the Fourteenth Circuit and hold that evidence of the box and its contents should not have been admitted at trial.

A. Ristroph did not obtain valid consent to search Petitioner's cardboard box because Reiser did not have apparent authority over the box and, at minimum, Ristroph should have inquired into the ownership of the box.

Ristroph's warrantless search of Mr. Hemlock's closed cardboard box violated his Fourth Amendment right because Reiser did not have apparent authority over the stairs where the box was located and, even if the ownership was ambiguous, Ristroph should have inquired further. Thus, Ristroph could not and did not obtain valid consent to search the stairs, let alone the cardboard box. Consent to search must be objectively evaluated in conjunction with the attendant circumstances to determine whether a reasonable person would believe that the consenting party had authority over the premises or effects. *Rodriguez*, 497. U.S. at 188. Absent a reasonable

belief of authority to consent, "warrantless entry without further inquiry is unlawful unless authority actually exists." *Id.* at 189.

In this case, it was not objectively reasonable for Ristroph to conclude that Reiser had authority to consent to the search of the box. First, Reiser's statements to Ristroph made it clear that she did not have authority to consent to a search of the stairs where the box was located. Second, even if Reiser did not make her lack of authority over the stairs clear, Ristroph should have inquired into the ownership of the box because its ownership was at least ambiguous.

1. Reiser's statements to Ristroph clearly explained that she did not have authority to consent to a search of the stairs.

When Ristroph began searching the cabin, Reiser's statements explicitly conveyed that she lacked authority over the stairs leading to the loft which was completely under Mr. Hemlock's control. Authority may not be inferred solely from a property interest a third-party has in a property. *Matlock*, 415 U.S. at 171 n. 7. In *United States v. Whitfield*, the D.C. Circuit concluded that agents could not reasonably believe a person had authority to consent to a search of a tenant's bedroom simply because they owned the house. 939 F.2d 1071, 1075 (D.C. Cir. 1991). When federal agents went to a suspect's address to aid their investigation, a woman answered the door, identifying herself as the suspect's mother and owner of the home. *Id* at 1072. The mother, however, explained that her son paid rent to live there, thus establishing a landlord-tenant relationship. *Id*. The agents then elicited that the suspect kept his room unlocked which provided the mother with "free access" to the room. *Id*. After the mother verbally consented, the agents searched the room, including the pockets of the suspect's coats located in the closet. *Id*. at 1073. The circuit court declined to find that the agents established that the mother had authority to consent to a search because the "superficial and cursory questioning" did not provide enough information to support a reasonable belief that she had authority to allow the search. *Id*. at 1075.

In this case, just because Reiser lived in the cabin with Mr. Hemlock did not allow Ristroph to reasonably believe she had authority to consent to the stairs or the loft, especially when her words indicated otherwise. As in *Whitfield*, where the agents went to the suspect's address while the suspect was not there, Ristroph only arrived after Mr. Hemlock had been warrantlessly arrested and waited down the road until Reiser returned home. (R. 13). Once Reiser arrived home, Ristroph knocked on the door and requested to look around the home as part of his investigation into Mr. Hemlock, just as the agents in *Whitfield* asked the mother to search her home in connection with an investigation into her son. (R. 13). However, unlike how the agents in *Whitfield* who requested to search the suspect's room, Ristroph only pointed to the nook where the stairs were and asked if Reiser slept up there, not whether he could search the area. (R. 15). With this, Reiser explicitly informed Ristroph that the stairs led to the loft, which only Mr. Hemlock used as storage space and an office. (R. 15). Moreover, when Ristroph questioned Reiser about what Mr. Hemlock kept upstairs in the loft, Reiser stated that she did not know because she did not go up there. (R. 15). Thus, if it was unreasonable for the agents in *Whitfield* to believe the homeowner had apparent authority to consent to a search of the suspect's bedroom even after she agreed, it was even more unreasonable here for Ristroph to assume Reiser had authority over the stairs without asking to search, given that she explicitly told him that she did not use the stairs nor know what was in the loft attached to the stairs.

2. Even if Reiser had apparent authority, Ristroph had a duty to inquire further into the ownership of the unmarked, closed cardboard box because, at minimum, its ownership was ambiguous.

Assuming it even was reasonable for Ristroph to infer that Reiser had apparent authority over the stairs, ownership of the unmarked, closed cardboard box was ambiguous at best, thus, Ristroph should have further inquired into its ownership. The fact that a person has authority

over a particular area does not mean that the person can authorize a search of "anything and everything" within the area. *United States v. Peyton*, 745 F.3d 546, 552 (D.C. Cir. 2014). In *Peyton*, police officers sought to warrantlessly search a small, one-bedroom apartment that a suspect shared with his roommate. *Id.* at 549. Both people were residents on the lease with the roommate using the bedroom, while the suspect used part of the living room as his storage space and bedroom. *Id*. The officers went to the apartment after the suspect was arrested and asked the roommate if they could search the entire apartment, to which the roommate agreed. *Id*. While the officers were searching one area of the living room, the roommate informed them how that specific area was where the suspect kept his personal property. *Id*. An officer identified a closed shoebox near the suspect's bed, picked it up, and found incriminating evidence inside. *Id.* at 549-50. The circuit court held that the officer should not have searched the shoebox without further inquiry into whether the roommate had authority because the roommate's statement strongly suggested that she did not use the shoebox nor have permission to do so. *Id*. at 554.

Even circuit courts that do not recognize a duty to inquire still require police to form impressions as to authority based on context. *United States v. Almeida-Perez*, 549 F.3d 1162, 1172 (8th Cir. 2008). In *Almeida-Perez*, police officers were conducting a narcotics investigation and went to a suspect's house, where they were brought inside by a man they had seen freely entering and exiting the house. *Id*. at 1164. Once inside, the officers saw three or four more people, at which time they asked if anyone else was inside the house. *Id*. at 1165. A woman stated that a man was in one bedroom and a man and a woman were located in another bedroom. *Id*. An officer then asked if he could knock on the bedroom doors and ask the people to join the rest of them in the living room. *Id*. The woman agreed, and the officer knocked and entered both bedrooms, finding the specified people inside, along with an illegal gun inside each bedroom. *Id*.

The two men in their respective rooms were two of the three people responsible for the house and were the ones charged with illegal possession of a firearm. *Id.* The Eighth Circuit held that the officers were not required to inquire about authority because the man who let them into the house gave the appearance that he had "freedom of the dwelling," while the woman's words and gestures were reasonable enough for the officers to rely on her having the authority to let the officer enter the bedrooms. *Id.* at 1171-1172; *see also United States v. Melgar*, 277 F.3d 1038, 1041-42 (7th Cir. 2000) (declining to require police to inquire about purse ownership found in hotel room where hotel room renter authorized indiscriminate search of entire room).

Here, it was necessary for Ristroph to inquire into the ownership of the cardboard box prior to opening it. While Reiser, like the roommate in *Peyton*, consented to a search of the common areas of the apartment, Reiser also stated that the stairs led to the loft, which only Mr. Hemlock used as storage space, thus identifying the area as under his exclusive control, just as the roommate in *Peyton* did. (R. 15). However, unlike in *Peyton*, where the officers were already located in the vicinity of where the shoebox was found when the roommate told them about the suspect's exclusive control, Ristroph only walked over to the stairs after Reiser clarified the area as belonging to Mr. Hemlock. (R. 16-17). Therefore, if the officer in *Peyton* had a duty to inquire about the ownership of the shoebox found where the suspect kept his personal property, even more so should have Ristroph because he only found the unmarked, closed box by going to the stairs after Reiser identified the loft as Mr. Hemlock's personal area.

Moreover, reliance on jurisdictions that do not recognize a duty to inquire is misplaced. While both the officers in *Almeida-Perez* and Ristroph were brought into the homes by a person with apparent authority to do so, the similarities stop there. The officer in *Almeida-Perez*, upon entering the house, inquired whether he could go into closed rooms to get the other people,

which a woman with apparent authority agreed to, unlike here, where Ristroph did not ask for any permission after receiving consent to search. (R. 15-16). Ristroph saw a closed box and decided to open it, although he did not know who it belonged to, whereas the officer in *Almeida-Perez* only opened the closed doors after receiving permission from a person with apparent authority over the house. (R. 16). Thus, while the circuit court in *Almeida-Perez* held that the officer did not have a duty to inquire whether the apparent authority was proper based on the context of the interaction, the officer still inquired prior to opening closed areas of the house. As such, Ristroph should have inquired into the ownership of the box prior to rummaging through it.

B. Reiser limited the scope of her consent to shared spaces on the first floor, therefore Ristroph exceeded any consent he might have obtained when he probed through the closed box on the stairs.

Even if it were reasonable for Ristroph to assume that Reiser had apparent authority over the stairs, he exceeded the scope of her consent when he went over to the stairs and rifled through the closed cardboard box because she had verbally and physically limited her consent to shared spaces on the first floor. The scope of consent to conduct a search is defined by its expressed object. *Jimeno*, 500 U.S. at 251.

The Fourteenth Circuit erred by failing to recognize that Reiser restricted the scope of her consent to exclude the stairs and loft by informing Ristroph that the loft was dedicated to Mr. Hemlock, meaning she did not access the area. Reiser expressly limited the scope of her consent to exclude the stairs and the loft, both through her words and by pointing to where she had control: the bedroom. (R. 15). When Ristroph asked Reiser if the stairs led to their bedroom, Reiser recalls informing him that the stairs led to the loft, which was exclusively under Mr. Hemlock's control and pointed towards the back of the house where the bedroom was located. (R. 15). However, Ristroph states that Reiser told him that "Reiser and Hemlock used it" and

"because of that comment, [he] confined the search to the first floor." (R. 13). If Reiser did inform Ristroph that they both used the loft, then it is unclear why this would limit the scope of his search to only the first floor, given that Reiser's alleged statement would demonstrate apparent authority under the government's logic. Thus, it is evident that Ristroph understood the scope of Reiser's consent to be confined away from the loft and stairs and exclusive to the areas on the first floor where they both had control.

Moreover, the Fourteenth Circuit failed to contextualize its reliance on a Sixth Circuit case regarding "clarify[ing] her authority," thus leading to the wrong conclusion. (R. 57); *United States v. Taylor*, 600 F.3d 678, 685 (6th Cir. 2010). In *Taylor*, the police went to a woman's home to arrest a man that was inside. *Id.* at 679. The police did not have a warrant to search the home but received the woman's consent to do so. *Id.* The officers found a spare bedroom with men's clothes lying around and a closet with men's and children's clothes. *Id*. Also inside the closet was a shoebox, which had a handgun, ammunition, and a jail-identification bracelet of the man who was arrested. *Id.* at 679-80. After finding the box, the officers asked the woman if anyone else lived in the apartment, which she denied, but stated that she let the man store his belongings in the bedroom the officers just searched. *Id.* The woman noted she "didn't really use the closet" the shoebox was in, only using it to store "stuff she had when [she] was a kid." *Id.* The Sixth Circuit affirmed the granting of the motion to suppress the shoebox because "*the officers easily could have gone downstairs and asked [the woman] 'to clarify her authority over' the shoebox.*" *Id.* at 685 (emphasis added). Thus, while the Fourteenth Circuit correctly noted that authority over the box should have been clarified, it was Ristroph's responsibility, as he could have easily asked Reiser without moving from where he was. (R. 15-17).

III. Extrinsic evidence of Copperhead's highly relevant prior misconduct is admissible to impeach her because Rule 806 must modify Rule 608(b) when a declarant cannot be called to testify and there is otherwise no opportunity for impeachment.

Extrinsic evidence of specific instances of conduct is admissible when a hearsay declarant is unavailable to testify and their prior misconduct is probative of their character for truthfulness because, under these circumstances, Rule 806 modifies Rule 608(b). Together, these Rules authorize impeaching Iris Copperhead ("Copperhead") through her prior misconduct, and extrinsic evidence is the only way to do so. Moreover, the prior conduct at issue is highly probative of the credibility of the admitted statement. Without the ability to introduce this evidence, Mr. Hemlock would be left with no meaningful way to discredit Copperhead and her statement, which serves as a central component of the government's case-in-chief. Though circuit courts are unclear on whether extrinsic evidence is admissible when a declarant cannot be called to testify, this Court should conclude that it is, given the otherwise inequitable result of leaving defendants powerless to impeach a declarant. Accordingly, this Court should reverse the Fourteenth Circuit Court of Appeals' ruling and admit evidence of Copperhead's academic integrity violation and falsified job application.

Rule 806 provides that, when a hearsay statement is admissible, "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. Simultaneously, Rule 608(b) permits inquiries into specific instances of a witness's prior conduct on cross-examination if the conduct is probative of the witness's character for truthfulness. FED. R. EVID. 608(b). This rule, however, limits the use of specific instances of conduct to cross-examination and prohibits introducing extrinsic evidence to prove that the witness engaged in such conduct. *Id.*

Any potential concern that the jury will be confused by the admission of extrinsic evidence when a declarant is unavailable to testify, and therefore cannot be cross-examined, is effectively addressed by the limitation that the prior misconduct must "actually cast doubt on the credibility of [the declarant's] statements." *United States v. Friedman,* 854 F.2d 535, 570 (2d Cir. 1988) (quoting *United States v. Serna,* 799 F.2d 842, 850 (2d Cir. 1986)). Moreover, the right of criminal defendants to cross-examine witnesses testifying against them, implicit in the Sixth Amendment's confrontation right, is essential and fundamental for a fair trial. *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973) (quoting *Pointer v. Texas*, 380 U.S. 400, 405 (1965)). This Court has thus espoused the principle that "where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule[s] may not be applied mechanistically to defeat the ends of justice." *Id.* at 302.

Hearsay statements are inherently unreliable, and Rule 806 protects against the danger that the jury will accept Copperhead's statement at face value by permitting Mr. Hemlock to attack her character for truthfulness as if she were testifying. Testifying witnesses may have their credibility attacked by prior misconduct because Rule 608(b) explicitly permits counsel to inquire into such conduct on cross-examination. Therefore, the same opportunity must exist for Mr. Hemlock to impeach Copperhead's credibility through her academic violation and falsified job application – especially given that these incidents demonstrate how she misrepresents the truth for personal gain, and that Mr. Hemlock has no other way to meaningfully cast doubt upon her credibility. Accordingly, Mr. Hemlock respectfully requests this Court reverse the decision of the Fourteenth Circuit and admit evidence of Copperhead's prior misconduct.

A. Rule 806 allows an opposing party to introduce extrinsic evidence of specific instances of conduct to impeach a declarant because Rule 608(b) permits utilizing such conduct to impeach a testifying witness on cross-examination.

Rule 806 modifies Rule 608(b)'s extrinsic evidence restriction because, read in concert, the two rules allow for a declarant to be impeached with specific instances of prior misconduct. *See* FED. R. EVID. 806; FED. R. EVID. 608. Rule 806 is intended to place defendants on equal footing with the offering party by subjecting the declarant to character impeachment. *See* FED. R. EVID. 806. As the Advisory Committee explains, the credibility of a declarant "should in fairness be subject to impeachment and support as though he had in fact testified." FED. R. EVID. 806 advisory committee's notes on proposed rules. At the same time, Rule 608(b) permits using a witness's prior misconduct to impeach their character for truthfulness through inquiries into such conduct on cross-examination. FED. R. EVID. 608(b).

Rule 806 therefore authorizes impeaching a declarant through prior misconduct, which may necessitate introducing extrinsic evidence. *See* Margaret Meriwether Cordray, *Evidence Rule 806 and the Problem of Impeaching the Nontestifying Declarant*, 56 OHIO ST. L.J. 495, 522 (1995) (suggesting that Rule 608(b) does not categorically prohibit admitting extrinsic evidence under Rule 806). This construction of Rule 806 is further supported by the principle that the Rules must "be construed so as to administer every proceeding fairly… and promote the development of evidence law." FED. R. EVID. 102. To interpret the relationship between Rules 806 and 608(b) otherwise would significantly disadvantage defendants by hindering their ability to impeach declarants.

When a declarant does not testify and is not subject to cross-examination, extrinsic evidence is the only way to attack their credibility with prior bad acts. *Friedman,* 854 F.2d at 570 n.8. Emphasizing that Rule 608(b) limits evidence of prior misconduct to inquiries on cross-

examination, the Second Circuit has taken the position that relevant extrinsic evidence of such conduct may be admissible to impeach a non-testifying declarant. *Id.* Because Rule 806 applies only when the declarant cannot be cross-examined, and therefore cannot be asked about their prior conduct, the *Friedman* court recognized that "extrinsic evidence may be the only means of presenting such evidence to the jury." *Id*.; *see also United States v. Uvino*, 590 F. Supp. 2d 372, 375 (E.D.N.Y. 2008) (permitting evidence of story fabricated to explain participation in robbery for jury to weigh in considering whether hearsay exclamations were similarly untrue). *But see United States v. Saada,* 212 F.3d 210, 221 (3d Cir. 2000) ("[T]he unavailability of the declarant will not always foreclose using prior misconduct as an impeachment tool because the witness testifying to the hearsay statement may be questioned about the declarant's misconduct.").

In this case, Rule 806 permits introducing extrinsic evidence to prove that Copperhead impermissibly used artificial intelligence ("AI") to complete her senior capstone project and lied on a job application by falsely reporting that she earned her B.A. because she cannot otherwise impeached by these incidents. Testifying for the government, Theodore Kolber ("Kolber") relayed his encounter with Copperhead in the park following Mr. Hemlock's arrest. (R. 41-46). Kolber heard Copperhead blame Mr. Hemlock for their conspiracy, shouting, "I can't believe I saw him get arrested. It's all his fault. It was all Atticus' idea – NOT MINE! I can't run a business from prison!" (R. 43). Had Copperhead testified, Rule 608(b) would have permitted Mr. Hemlock to interrogate her about her previous deceitful conduct in order to put her character for truthfulness – and therefore the credibility of her statement – at issue for the jury. Mr. Hemlock's ability to ask Kolber about Copperhead's conduct is immaterial – Kolber had never met her, "[did] not know anything about her personal life," and knew nothing of her reputation among friends, teachers, or neighbors. (R. 43, 45-46). Therefore, the only way Mr. Hemlock could

invoke Copperhead's prior misconduct to cast well-warranted doubt upon the credibility of an integral piece of evidence against him is with extrinsic evidence.

B. Copperhead's academic misconduct and forged job application directly involve the credibility of her statement because such conduct demonstrates her evasion of responsibility and misrepresentation of the truth for personal gain.

If an unavailable declarant's prior misconduct directly undermines the truthfulness of the admitted statement, extrinsic evidence is admissible. *Friedman,* 854 F.2d at 570. Determining the evidence's probative value in these circumstances requires the court to "compar[e] the circumstances of the past conduct with those surrounding the hearsay statements." *Id.* In *Friedman*, the defendant sought to admit evidence that the declarant lied to law enforcement about a previous suicide attempt. *Id.* at 569. Facing potential prosecution as the target of a criminal investigation, the declarant attempted to take his own life and subsequently told law enforcement that he was abducted when in actuality his wounds were self-inflicted. *Id.* at 569-70. The court rejected the defendant's argument that this demonstrated the declarant's tendency to shift responsibility to others for his own actions, reasoning that he was in a "distraught" state when talking to law enforcement and was merely trying to conceal his own consciousness of guilt. *Id.* Moreover, it was not "as if [the declarant] had specifically accused someone as an abductor in his false explanation of the wounds." *Id.* at 570. Given that the hearsay statements were admitted as made in furtherance of a conspiracy between the declarant and the defendant, the court also noted that the declarant was not attempting to shift blame because the statements equally implicated himself. *Id.* Accordingly, the Second Circuit affirmed the district court's exclusion of evidence of the suicide attempt. *Id.*

In this case, Copperhead's academic misconduct and fabricated job application are highly probative of the truthfulness of her statement because both incidents involved evading

responsibility and lying for her own advantage. Instead of doing the work herself, Copperhead used AI to complete her capstone project – resulting in a submission riddled with fake sources and "elevated vocabulary [she] did not previously employ." (R. 9, 47-48). She then attempted to pass the assignment off as her own work product. (R. 9, 47-48). Upon getting caught, Copperhead failed the course and was thus unable to graduate from Court Street College. (R. 9, 47-48). Months later, she falsely reported that she earned her B.A. from the college in order to appear eligible for the role of Executive Assistant to the Boreum Mayor because the application explicitly required a Bachelor's degree from a four-year college. (R. 10, 48-49). She further misrepresented her qualifications stating, "[s]ince graduating from Court Street College in May 2023, I have been eager to apply my major . . . in my hometown." (R. 10).

Unlike the *Friedman* declarant who was in a state of shock when explaining the source of his wounds, Copperhead's deceitful conduct was calculated. She intentionally presented an AI work product as her own in order to pass the course and complete her major. (R. 9, 47-48). She then took things a step further by applying for a position that she was wholly unqualified to fulfill, pointedly lying about and feigning pride in her qualifications to increase her chances of being selected. (R. 10, 48-49). Furthermore, Copperhead's statement was admitted as an excited utterance, rather than a co-conspirator statement like *Friedman*, and did not implicate her in any way. (R. 43-44). In fact, the majority of her statement wherein she exclaimed, "It's all his fault. It was all Atticus' idea – NOT MINE!" was intended to convey "to the world" that Mr. Hemlock bore sole responsibility for their joint actions. (*See* R. 43). Whereas the *Friedman* declarant made no specific accusation, Copperhead singled out Mr. Hemlock. (R. 43). Accordingly, Copperhead's academic misconduct and falsified job application establish the nexus

contemplated by the *Friedman* court and effectively cast doubt upon the credibility of her statement.

C. Extrinsic evidence of prior misconduct is the only way to approximate the effects of cross-examination when a declarant cannot be called to testify and cannot be impeached in any other manner provided by the Rules.

Underlying the constitutional right of criminal defendants to cross-examine the witnesses testifying against them is the importance of enabling the jury to assess the witness's credibility through their demeanor when subjected to adversarial questioning. *See California v. Green*, 399 U.S. 149, 158 (1970) (emphasizing that confrontation "permits the jury that is to decide the defendant's fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility"); *Mattox v. United States*, 156 U.S. 237, 259 (1895) (explaining that confrontation compels witness "to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives testimony whether he is worthy of belief.").[1] Observing live testimony provides the jury with the crucial ability to evaluate a witness's trustworthiness through their behavior and mannerisms – such as facial expressions, body language, and signs of nervousness – rather than words alone. *United States v. Hamilton*, 107 F.3d 499, 503 (7th Cir. 1997). When a declarant does not testify, the jury cannot weigh these factors when considering the reliability of their statement. *See id.* Accordingly, defendants must be afforded a fair opportunity to approximate the effects of cross-examination by putting the declarant's credibility at issue in an equally effective manner.

[1] *See also Chambers*, 410 U.S. at 294 ("[Petitioner's] defense was far less persuasive than it might have been had he been given an opportunity to subject [the declarant's] statements to cross-examination"); *Crawford v. Washington*, 541 U.S. 36, 61 (2004) (holding that the Confrontation Clause requires the reliability of testimonial evidence to be tested in the "crucible of cross-examination.").

If extrinsic evidence of a declarant's prior misconduct is prohibited, there are otherwise very limited grounds on which to impeach their credibility. *Saada,* 212 F.3d at 221. As the Third Circuit noted, without evidence of prior misconduct, the credibility of a hearsay declarant is limited to impeachment with opinion and reputation evidence of character, evidence of criminal convictions, and evidence of prior inconsistent statements. *Id.* Moreover, banning extrinsic evidence would prohibit prior misconduct from being used as an impeachment tool generally "unless the witness testifying to the hearsay has knowledge of the declarant's misconduct." *Id.* at 222; *see also United States v. White*, 116 F.3d 903, 920 (D.C. Cir. 1997) (allowing inquiries into declarant's prior drug use and related convictions known to testifying witness, while limiting questions about other misconduct with which witness was less familiar "in light of the damage already done to [the declarant's] credibility"). Therefore, if the witness testifying to the hearsay statement does not know the declarant, impeachment is limited to a prior criminal conviction or inconsistent statement. *Saada*, 212 F.3d at 222. If neither of these options are available, there is then effectively no way for a defendant to challenge the declarant's credibility. *See id.*[2]

Here, Copperhead died prior to trial. (R. 53). The jury was thus wholly deprived of the opportunity to observe her demeanor under the pressures of intense questioning, and to use her behavior to form an opinion about her reliability and the truth of her testimony. Absent this, Mr. Hemlock was placed at a significant disadvantage in countering a seemingly highly incriminating piece of evidence against him. Moreover, as aforementioned, Kolber had never met or heard of Copperhead prior to his encounter with her in the park. (R. 43, 45-46). Unlike the witness in *White* who could sufficiently "damage" the declarant's credibility through testimony about his

[2] *See also* Gregory J. Gianoni, *Lose the Battle, Win the War: The Use, Dangers, and Problems Surrounding Rules 806 and 608(B), and How They Can Be Fixed*, 20 SUFFOLK J. TRIAL & APP. ADVOC. 1 (2015) (encouraging admitting extrinsic evidence to impeach a non-testifying declarant because "the Federal Rules of Evidence should not destroy what might be a party's only means of impeachment").

drug abuse and related convictions, Kolber would have been unable to provide any effective answers to questions regarding Copperhead's prior misconduct. (*See* R. 43, 45-46).

Without the ability to discredit Copperhead through her use of AI to complete a major assignment and her deliberate lie on a job application, Mr. Hemlock is completely barred from attacking her credibility. Absent extrinsic evidence, Mr. Hemlock is precluded from using Copperhead's prior misconduct as an impeachment tool. Moreover, there is nothing in the record to suggest that Copperhead could be impeached by a criminal conviction or prior inconsistent statement. (*See* R. 46). Providing the jury with evidence of her prior misconduct is therefore the only way to replicate the effects of cross-examination. As such, Mr. Hemlock respectfully requests this Court admit extrinsic evidence of Copperhead's prior misconduct to remedy this inequity and allow Rule 806 to serve its purpose of leveling the playing field for the opponents of admitted hearsay statements.

CONCLUSION

For the foregoing reasons, the Petitioner, Atticus Hemlock, respectfully requests this Court reverse the decision of the Fourteenth Circuit Court of Appeals and remand this case with instructions to (1) exclude Petitioner's diary, (2) strike all evidence of the box and its contents, and (3) permit extrinsic evidence to impeach Iris Copperhead.

Respectfully Submitted,

/s/ Team T17
Counsel for Petitioner