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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 RESPONDENT

QUESTIONS PRESENTED

1. Whether, under *Payton v. New York*, the Fourth Amendment is violated when law enforcement officers, who remain outside, command a suspect inside the home to step outside and arrest the suspect outside the home without a warrant.
2. Whether the Fourth Amendment is violated when law enforcement conducts a warrantless search of a closed container located in a shared residence after obtaining a co-occupant's consent to search the residence, without specifically inquiring into ownership of the container.
3. Whether, under Rule 806 of the Federal Rules of Evidence, extrinsic evidence of specific instances of conduct of a hearsay declarant may be admitted to impeach the declarant's character for truthfulness when the declarant is unavailable to testify at trial.

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In the United States District Court for the Northern District of Boerum, Atticus Hemlock ("Petitioner") was charged via a one-count indictment of attempting to kidnap a United States Government Officer in violation of 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d). (R. at 1.) Prior to trial, Petitioner filed two motions to suppress evidence; motion one was to suppress a notebook that was seized incident to arrest, and motion two was to suppress the materials found in a cardboard box during the search of the Defendant's residence. (R. at 19; 31-32.) The district court denied both motions, holding the arrest and the search of the carboard box as constitutionally permissible. (R. at 31, 38.)

Petitioner's trial began on August 5, 2014. (R. at 53.) At trial the Government called a witness to testify about the statement made by Iris Copperhead ("Copperhead"). (R. at 54.) The district court admitted the statement as hearsay under the excited utterance exception in Fed. R. Evid. 803(2). (R. at 54.) Petitioner tried to impeach Copperhead's credibility as a hearsay declarant pursuant to Rule 806 of the Federal Rules of Evidence. (R. at 54). The Government objected to Petitioner's introduction of evidence; the district court sustained the objection. (R. at 54.) The jury returned a judgment of conviction against Petitioner; the court sentenced him to ten years on Count 1. (R. at 51.)

Petitioner filed a timely appeal to the United States Court of Appeals for the Fourteenth Circuit. (R. at 51.) The issues presented on appeal were: (1) whether the law enforcement officers violated *Payton v. New York*; (2) whether the Fourth Amendment was violated when the officers searched a container inside Hemlock's home; and (3) whether extrinsic evidence of specific conduct can be admitted to impeach a hearsay declarant. (R. at 51.) The Fourteenth

Circuit affirmed the district court's ruling. This Court granted Petitioner's petition for writ of certiorari. (R. at 62.)

STATEMENT OF THE CASE

On or about February 20, 2024, the Department of Tourism ("Department") announced that Jodie Wildrose ("Wildrose"), the Department's Under Secretary for Rural Development, would be visiting Boerum Village to lead a delegation during the week of April 8, 2024. (R. at 3-4.) Wildrose was scheduled to visit as part of the Department's new program to acquire underutilized farmland. (R. at 3-4.)

On or about March 28, 2024, the Boerum Village Police Department received a call from Elvis Hoag ("Hoag"), a barista at a local coffee shop, regarding a conversation he overheard between two customers at the coffee shop where he is employed. (R. at 7.) Hoag stated that Atticus Hemlock ("Petitioner") and Iris Copperhead ("Copperhead") were in the coffee shop on March 28 and 29, 2024. (R. at 7.) Hoag explained that he overheard Petitioner speak about napping Jodie and throwing her into a van. Copperhead replied that the parking lot would be a good place to grab Jodie rather than the busy airport. (R. at 8.)

Then on or about March 30, 2024, the Boerum Village police received a call from a cashier at Every-Mart. (R. at 6.) The cashier indicated to the police that she checked out two people, one male and one female, who made a cash purchase of some strange items. (R. at 6.) The cashier further explained that the items purchased included a pack of zip ties, two ski masks, a six-inch folding knife, black trash bags, and bear spray. (R. at 6.)

On or around April 2, 2024, Special Agents Hugo Herman ("Herman") and Ava Simonson ("Simonson") went to Petitioner's home to ask him questions regarding the incident.

(R. at 11.) While at Petitioner's home, the officers asked him if he would come outside and answer some questions. (R. at 11.) At first Petitioner told the agents that he was "uneasy talking with [them]" but asked, "what's going on?" (R. at 11.) Since Petitioner was speaking through his screen door, Agent Herman approached the cabin to hear the petitioner. (R. at 11.) During the conversation, Agent Herman noticed chloroform on Petitioner's counter. (R. at 11.) After asking Petitioner about the chloroform, he became agitated. (R. at 11.) At this moment, the agents decided to walk to the police vehicle to discuss their observations. (R. at 12.) The agents determined that probable cause had been established to make an arrest. (R. at 12.) The agents walked back to the porch and asked Petitioner to step outside, to which he complied. (R. at 12.) Upon his exit from the home, the agents placed him under arrest and conducted a search incident to arrest. (R. at 12.) A spiral bound notebook was seized from his person. (R. at 12). The notebook was opened to a page discussing the petitioner's kidnapping plan and his hatred for Jodie. (R. at 23-24).

Unbeknownst to the Special Agents, Copperhead was on her way to the cabin to meet Petitioner and Reiser for dinner and witnessed the arrest. (R. at 53.) Shortly thereafter, a resident of Boerum Village, Theodore Kolber ("Kolber"), saw Copperhead burst through the woods as he was walking through Joralemon State Park. (R. at 53.) Copperhead began to yell about seeing Petitioner get arrested and how it was all his fault. (R. at 43.) Copperhead was arrested on April 2, 2024, and died suddenly that same night. (R. at 46.)

Agent Ristroph arrived on scene at 4:30 p.m., on April 2, 2024. (R. at 13.) Agents Herman and Simonson asked him to stay behind and wait for Petitioner's girlfriend ("Reiser") to get home. (R. at 13.) Reiser and Petitioner both reside at the cabin together since May 2023. (R. at 15.) When Reiser got home twenty minutes later, the Agent explained Petitioner's arrest and

asked if he could look around the house, to which Reiser consented. (R. at 13.) During his search, Reiser informed him that the second floor of the residence was for storage. (R. at 13.) The Agent confined the search to the first floor of the house, where he then saw a cardboard box on the second step of the staircase. (R. at 17.) In the box, Agent Ristroph found: 1 50-feet long rope, 2 black ski masks, 1 pair of green gloves, 48 black zip ties, 1 folding knife, 1 roll of duct tape, and 2 bottles of chloroform. (R. at 13.)

SUMMARY OF THE ARGUMENT

The Court should affirm the ruling of the Fourteenth Circuit as there was no violation of the Fourth Amendment. The arrest of the petitioner took place outside of his home after willful compliance with requests to step outside. Moreover, the search of the cardboard box was valid as Agent Ristroph possessed a reasonable belief that Reiser's consent extended to the search of the carboard box. The Court should also affirm the Fourteenth Circuit's ruling as the district court correctly denied the petitioner's request to admit evidence to impeach a hearsay declarant. Factual determinations are reviewed for clear errors, and legal determinations are reviewed de novo. *United States v. Lowry*, 935 F.3d 638, 641 (8th Cir. 2019). Courts must construe the facts in the light most favorable to the party that prevailed in the district court. *United States v. Knights*, 989 F.3d 1281, 1286 (11th Cir. 2021). There are three issues before the Court.

The Supreme Court clearly set the boundary in *Payton*: "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 v. New York*, 445 U.S. 573, 586 (1980). In this case, the Government did not violate *Payton* when they asked the petitioner to step outside to effectuate the arrest because the agents never passed the physical threshold of the home. Thus,

the Court should affirm the lower court's adoption of *Payton's* bright line rule, as it provides clarity and predictability in judicial and law enforcement procedures.

However, in the case of those who adopt the constructive entry doctrine, it must be shown that the officers coerced the defendant outside his home to facilitate the arrest. Even if the Court were to adopt the constructive entry doctrine, the agents did not coerce the petitioner outside of his home because the agents did not use force or a show of authority to coerce the petitioner outside.

The agents possessed a reasonable belief that Reiser had apparent authority to search inside the cardboard box found in the cabin, for that reason a warrant was not required, and the denial of the suppression motion was correct. Many courts have held that apparent authority cannot be used when searching for an item located in a private area, such as a bedroom, when that area is only used by the person who owns that item. However, when the search covers a much larger area in which the occupants possess common authority, it is reasonable for the police to believe that there is shared use of the containers among the occupants. The container searched by the officer was located at the bottom of a staircase, in a place typically used by both the petitioner and his girlfriend. The container was not in a private place only used or accessed by the petitioner. Moreover, the box did not contain any identifying information that would have given the officers reason to believe that it belonged solely to the petitioner.

Lastly, the Fourteenth Circuit correctly affirmed the denial of the introduction of extrinsic evidence to impeach the credibility of a hearsay declarant. When applying the Federal Rules of Evidence, Rule 806 and 608(b), it is best to interpret the rules in a way that gives effect to congressional intent. For that reason, Rule 806 does not override Rule 608(b)'s explicit ban on extrinsic evidence.

Therefore, the Court should uphold the judgment of the Fourteenth Circuit to preserve the integrity of the Fourth Amendment and Federal Rules of Evidence.

ARGUMENT

I. THE FOURTEENTH CIRCUIT CORRECTLY DENIED THE PETITIONER'S SUPPRESSION MOTION AS THE PETITIONER'S ARREST DID NOT VIOLATE THE FOURTH AMENDMENT AND THE NOTEBOOK SEIZED INCIDENT TO ARREST WAS PROPERLY ADMITTED BECAUSE LAW ENFORCEMENT DID NOT CROSS THE *PAYTON* THRESHOLD.

The Fourteenth Circuit correctly denied the petitioner's motion to suppress evidence of the notebook because the petitioner's arrest prior to the notebook's seizure did not violate the Fourth Amendment.[1]

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. An arrest warrant is not required when law enforcement officers have probable cause to believe the suspect committed a felony. *United States v. Watson*, 423 U.S. 411, 417 (1976) (citing *Carroll v. United States*, 267 U.S. 132, 156 (1925)). However, this differs from arrests in the home. The Supreme Court in *Payton v. New York* explained that the "zone of privacy" is "more clearly defined . . . when bounded by the unambiguous physical dimensions of an individual's home." *Payton*, 445 U.S. at 589. Under the Fourth Amendment it is a basic principle "that searches and seizures inside a home without a warrant are presumptively unreasonable." *Id.* at 586. The Supreme Court clearly set the boundary in *Payton*: "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." *Id.* at 590.

[1] The petitioner does not contest the issue of probable cause.

Factual determinations are reviewed for clear errors, and legal determinations are reviewed de novo. *Lowry*, 935 F.3d at 641. Courts must construe the facts in the light most favorable to the party that prevailed in the lower court. *Knights*, 989 F.3d at 1286.

The petitioner argues that the Fourteenth Court erred in concluding that he was arrested outside of the home. Specifically, Petitioner states that the agents violated his Fourth Amendment rights when the agents constructively arrested him inside of his home. Moreover, the petitioner argues that the constructive entry doctrine provides that when law enforcement uses coercive tactics to lure a suspect out of their residence to facilitate an arrest, without an arrest warrant, they violate *Payton*. In addition, the petitioner states that even though the agents may remain physically outside of the residence, and the arrest may take place outside, the suspect still believes that he is within the sanctity of the home.

Despite the "firm line" drawn by *Payton*, a circuit split has emerged as to whether law enforcement violates *Payton* via the "constructive entry doctrine". Some circuits read *Payton* for its plain language and have said that "its literal holding that non-exigent warrantless arrests inside the home violate the Fourth Amendment." *Gaddis v. DeMattei*, 30 F.4th 625, 633 (7th Cir. 2022). Whereas other circuits apply the "constructive entry doctrine" and have held that coercion by law enforcement to force a suspect out of his home to effectuate a warrantless arrest violates *Payton*. *See United States v. Morgan*, 743 F.2d 1158, 1166-67 (6th Cir. 1984). However, *Payton* provides a bright-line rule that the Court should give deference to.

Therefore, the Fourteenth Circuit did not err in affirming the denial of Petitioner's suppression motion because the Fourth Amendment was not violated as law enforcement did not cross the *Payton* threshold.

The first sub-issue for the Court's review is whether the Fourteenth Circuit correctly adopted the physical entry standard as established in *Payton.*

A. The Fourteenth Circuit correctly adopted the physical entry standard established in Payton because it allows for consistency and predictability in law enforcement practices and the application of the rule of law.

The Fourteenth Circuit was correct in adopting the bright-line rule set by the Supreme Court in *Payton* because it ensures clarity and predictability in law enforcement practices.

The Supreme Court in *Payton* adopted a standard in which the Fourth Amendment "prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Payton*, 445 U.S. at 576. In the process of deciding the issue at hand, the Supreme Court consolidated two cases in which law enforcement officers effectuated a warrantless arrest. In one case, the officers went to the defendant's home to arrest him, but after breaking into the home using a crowbar, they found that no one was home. *Id.* at 576. In the other case, the officers arrived at the defendant's home, knocked on the door, and entered the home to execute the arrest. *Id.* at 578. The Court held that the Fourth Amendment draws a firm line at the entrance to the house, and unless there are exigent circumstances, that threshold may not be crossed without a warrant. *Id.* at 590. The Court reasoned that the core principle of the Fourth Amendment is to protect the sanctity of the home and allowing law enforcement to enter the home without a warrant is too substantial of an invasion. *Id.*

Despite the standard set by the Supreme Court, some circuits believe that "constructive entry" is substantial enough to violate *Payton*. This is the argument set forth by the petitioner in this case. However, the use of constructive entry places an impossible burden on both law enforcement and the courts. For example, the Second Circuit has expressed skepticism about the constructive entry doctrine and emphasized the practical difficulties it creates for law

enforcement officers and the judiciary. When discussing the application of the constructive entry doctrine, the court in *United States v. Allen*, 813 F.3d 76, 88 (2d Cir. 2016), states that "such a rule is beset with practice problems. The need to sort out whether an arrest occurred in, at, on, or by the threshold already presents close fact-finding issues for the district courts." *Id.*

In other words, to determine whether constructive entry applies, courts would be required to consider a multitude of factors such as the number and location of the officers, the way in which the officers transmitted the command, whether the officers had their guns holstered or if they brandished it, and the events leading up to and occurring during the arrest. *Id.* To have law enforcement and the judiciary evaluating such a list would cause too much uncertainty and complicate the application of the rule. As stated in the concurring opinion in *United States v. Reeves*, 524 F.3d 1161, 1172 (10th Cir. 2008), applying the constructive entry doctrine renders "any 'show of force' that induces a suspect to leave the home–whether or not excessively coercive–is tantamount to formal arrest regardless of the circumstances." *Reeves*, 524 F.3d at 1171.

Therefore, the Court should affirm the Fourteenth Circuit's adoption of the physical entry standard expressed in *Payton*. Affirming such a bright-line rule provides much-needed clarity, predictability, and uniformity, both in law enforcement practices and in the judiciary's consistent application of the rule of law.

B. Even if the "constructive entry doctrine" is adopted by this Court, this would not help the Petitioner because the Government did not coerce him to exit his home to execute a warrantless arrest.

Even if the Court were to recognize the "constructive entry doctrine," the agents did not coerce the petitioner out of his home. For that reason, the Fourteenth Circuit was correct in concluding that the petitioner was arrested outside the home without coercion.

To determine whether the petitioner was coerced outside of his home, the Court should focus on the conduct of the agents and the circumstances surrounding the interaction between the officers and the petitioner. The courts that recognize the constructive entry doctrine have looked at a non-exhaustive list of factors to determine whether the doctrine is applicable. Those factors include (1) the number and location of officers; (2) the nature and content of police commands; (3) use of weapons; (4) tone and volume of voice; and (5) surrounding circumstances. *Morgan*, 743 F.2d at 1160; *United States v. Maez*, 872 F.2d 1444, 1446 (10th Cir. 1989).

While the Sixth Circuit recognizes the constructive entry doctrine, the Court in *Thomas* held that the constructive entry doctrine was not applicable. *United States v. Thomas*, 430 F.3d 274, 275 (6th Cir. 2005). The court reasoned that "officers may take reasonable security precautions in doing their jobs" and in this case it was not unreasonable for there to be multiple officers to investigate the crime. *Id.* at 280. (Officers received a call regarding a suspicious truck near a tank of anhydrous ammonia. *Id.* at 275. As a result, the officers began to suspect the defendant of producing methamphetamine, so five uniformed officers arrived at the defendant's residence in their patrol vehicles to question him. *Id.* at 276. The officers asked the defendant to step outside, which he did). *Id.*

In contrast, the Sixth Circuit applied the "constructive entry doctrine" in *Morgan*. The court held that law enforcement officers violated *Payton* when they coerced the defendant outside of his home to execute a warrantless arrest. *Morgan*, 743 F.2d at 1168. Police received a complaint about target shooting at a park. *Id.* at 1160. Eventually the officers assessed the situation, and without a warrant, the Assistant Chief and nine other officers drove an agency issued vehicle into Morgan's yard, flooded the house with spotlights, surrounded the home, and called the suspect out using the bullhorn). *Id.* at 1161. The court reasoned that Morgan was

illegally arrested because of the officers' use of coercive tactics and physical restraints which ultimately lead to his presence at the door. *Id*. at 1161.

In addition, a more extreme case of coercion can be seen in *Maez*. Without having an arrest warrant, a SWAT team and armed officers surrounded the defendant's home, and by using the loudspeakers demanded the occupants to remove themselves from the home. *Maez*, 872 F.2d at 1446. While the officers were surrounding the home, they had rifles pointed at the house; they also searched and handcuffed a resident outside the house. *Id.* at 1447. Eventually the defendant and his family went outside. *Id.* The Tenth Circuit held that the constructive entry doctrine applied, and therefore the defendant was arrested inside his home. *Id.* The court reasoned that the coercive show of force by the SWAT team constituted a violation of *Payton*. *Id.*

In this case, the constructive entry doctrine does not apply because the agents did not demand compliance from the petitioner. Nor did the agents use coercive tactics. Rather, they calmly asked him for his compliance. This case is comparable to *Thomas*, but distinct from *Morgan* and *Maez*. Like *Thomas*, the number of law enforcement officials that arrived at Petitioner's home was justified for the surrounding circumstances. Similarly, the officers in *Thomas* did not brandish their weapons at any time during the interaction. Neither the agents nor the officers used a tone of voice that would be indicative of coercion. Just like the court in *Thomas* held that the constructive entry doctrine does not apply because there was no evidence of coercion, this court should hold that the constructive entry doctrine does not apply and therefore *Payton* was not violated.

By contrast, in *Morgan*, the constructive entry doctrine did apply because the officers used coercive tactics when they parked their vehicles in the yard and shined spotlights in his home. Here, however, the agents calmly approached the cabin, knocked on the door, then stepped

off the porch, and proceeded to calmly speak with the petitioner. In addition, unlike *Maez,* the constructive entry doctrine did apply because the defendant was coerced outside his home as it was surrounded by SWAT and ordered outside his home. Here, however, at no time was the petitioner coerced outside of his home because only two officers were at his home, calmly asking him to step outside.

The petitioner argues that the constructive entry doctrine does apply because the agents used coercive tactics and thus violated *Payton* threshold because the two agents repeatedly and aggressively demanded that he step outside, and they motioned toward their service weapon. However, the petitioner's argument is without merit as the agents used reasonable force to knock on the door three times, then stepped off the porch. Moreover, when the agents returned to the cabin, they remained off the porch and requested that the petitioner step outside. Therefore, the Court should hold that the constructive entry doctrine does not apply as there is no evidence that the agents used coercive tactics and thus did not violate *Payton's* threshold.

Therefore, even if the constructive entry doctrine is adopted by the Court, the agents did not coerce the petitioner out of his home as they simply asked the petitioner to step outside, to which he complied. As a result, the evidence seized incident to arrest was properly admitted into evidence.

II. THE FOURTEENTH CIRCUITCORRECTLY ADMITTED EVIDENCE SEIZED FROM A CLOSED CONTAINER IN THE DEFENDANT'S CABIN WITHOUT A WARRANT AS LAW ENFORCEMENT REASONABLY BELIEVED THAT REISER POSSESSED APPARENT AUTHORITY TO CONSENT TO THE SEARCH OF THE CARDBOARD BOX.

The Fourth Amendment precludes unreasonable searches and seizures. U.S. Const. amend. IV. Generally, a search is considered unreasonable where the government fails to obtain a search warrant issued upon a showing of probable cause. *Katz v. United States*, 389 U.S. 347,

357 (1967). Pursuant to the exclusionary rule, evidence seized in violation of the Fourth Amendment will be inadmissible. *Illinois v. Rodriguez*, 497 U.S. 177, 183 (1990). However, there are several exceptions to the general rule. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). Where the government obtains evidence in a search conducted pursuant to an exception, the government bears the burden of proving by a preponderance of evidence that the exception applies. *United States v. Basinski*, 226 F.3d 829, 833 (7th Cir. 2000). Failure to do so will result in suppression of evidence. *Id.* at 834. The standard of review for questions of law is de novo. *United States v. Lowry*, 935 F.3d 638, 641 (8th Cir. 2019).

Consent searches are an exception to the general rule. *Schneckloth*, 412 U.S. at 219. While the Fourth Amendment generally requires a warrant to search a home, where law enforcement obtains voluntary consent from: (1) the individual whose property is to be searched, *Id.* at 248; (2) a third party who possesses community authority over the premises or effects, *United States v. Matlock*, 415 U.S. 164, 171 (1974); or (3) a third party who possesses "apparent authority" over the premises or effects. *Rodriguez*, 497 U.S. at 186. Where an individual voluntarily consents to a search, a warrant is not required. *Schneckloth*, 412 U.S. at 219. To be voluntary, the consent must be freely, uncoerced, and voluntarily given. *Id.* at 222.

Therefore, the Fourteenth Circuit did not err in affirming the denial of Petitioner's suppression motion because the Fourth Amendment was not violated as the agents reasonably believed that Reiser had apparent authority to consent to the search of the cardboard box.

The first sub-issue for the Court's review is whether the Fourteenth Circuit correctly adopted the standard followed by the Second and Seventh Circuit.

C. The Fourteenth Circuit correctly adopted the standard followed by the Second and Seventh Circuits as the Court does not owe deference to the

D.C. Circuit because it imposes an impossible burden on law enforcement.

In the context of third-party consent, it is well established that "consent to a warrantless search by one who possesses common authority over premises or effects is valid against [an] absent, non-consenting person with whom that authority is shared." *Matlock*, 415 U.S at 170. "A third party has actual authority to consent to a search of a container if the owner of the container has expressly authorized the third party to give consent or if the third party has mutual use of the container and joint access to or control over the container." *United States v. Davis*, 332 F.3d 1163, 1169 (9th Cir. 2003).

In the context of apparent authority, a warrantless entry and the subsequent search are valid under the Fourth Amendment provided that the police reasonably believe that the person giving consent has the authority to do so, "even though they may later learn no such authority exists." *Rodriguez*, 497 U.S. at 186. In other words, the Fourth Amendment only requires that the facts on which the government officials rely on, at that moment, be such that a reasonable person would not demand further inquiry. *Id.* at 188. In determining whether there is a reasonable belief, the court may consider "[w]hether the facts presented at the time of the search would warrant a man of reasonable caution to believe the third party has common authority over the property depends upon all the surrounding circumstances." *United States v. Waller*, 426 F.3d 838, 846 (6th Cir. 2005).

The Second Circuit in *United States v. Snype*, 441 F.3d 119, 136 (2nd Cir. 2006), and the Seventh Circuit in *United States v. Melgar*, 227 F.3d 1038, 1041-2 (7th Cir. 2000), adopted a standard which provides that a search, pursuant to apparent authority, is "permissible if the police do not have reliable information that the container is *not* under the authorizer's control" Melgar, 227 F.3d at 1041. In other words, an open-end consent search "would permit the search and

seizure of any items found within the area with the exception to those 'obviously' belonging to another person." *Snype*, 441 F.3d at 136. The courts reasoned that to hold otherwise, would "impose an impossible burden on the police" if the courts were to require law enforcement officers to clarify ownership of ambiguous containers within a common area. *Melgar*, 227 F.3d at 1041. It was further reasoned that to impose such a duty "would mean that they could never search closed containers within a dwelling" without asking the person whose consent is "being given ex ante about every item they might encounter." *Id.* at 1042. (The court in *Melgar* held that the police had no reason to know that the floral purse they found under the mattress did not belong to the consenter as there was no identifiable marking on the exterior of the purse that would alert them that it belonged to another person). *Id.* at 1041-2.

In contrast, the D.C. Circuit in *Whitfield* adopted a standard, which provides that the apparent authority does not exist if the government, "faced with an ambiguous situation, nevertheless proceeds without making further inquiry." *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991). For example, the court in *Whitfield* held there was no apparent authority as the police failed to obtain sufficient information to support a reasonable belief that the consenter had the authority to permit the search of the bedroom and its effects. *Id.* The court reasoned that "mutual use" of the bedroom could not be inferred merely due to the original consenter's ownership of the house, that the bedroom door was unlocked, or the fact that the adult son did not pay rent. *Id.* The mother of the defendant consented to searching the home, including the defendant's bedroom, after police informed her that her son was suspected of stealing money. *Id.* at 1073. The police subsequently found incriminating evidence within the defendant's bedroom closet hidden in the pockets of four coats. *Id.*

In this case, the government is entitled to the rationale adopted in the Second and Seventh Circuits because it provides a workable standard for law enforcement and judiciary, and in turn makes it easier for compliance with the standard. In addition, it would prevent unnecessary litigation. Lastly, such a standard provides a presumption of reasonableness for a consent search that the challenging party must rebut with "creditable evidence demonstrating that [the items searched] where obviously and exclusively his." *Snype*, 441 F.3d at 136. Whereas the D.C. Circuit's standard is unworkable and cumbersome on the judiciary. Requiring officers to resolve every conceivable ambiguity would substantially erode the apparent-authority doctrine and impose an impractical burden on law enforcement. Lastly, the *Whitefield* approach fails to prove clear guidance as to what constitutes an "ambiguous" situation, leaving officers without a workable rule to apply in the field.

The petitioner argues that the standard adopted in the D.C. circuit protects an individual's Fourth Amendment and privacy rights as it would require the police to have positive knowledge that the closed container is also under the authority of the person who consented to the search. Moreover, it is anticipated that the petitioner would argue that the Second and Seventh Circuit's standard is over cumbersome on individual's Fourth Amendment rights as it would allow the police to be willfully blind to the obviousness that the container did not belong to consenter. However, the petitioner's argument is without merit as there are Fourth Amendment safeguards in place; individuals may limit the scope of their consent in time and place.[2] Moreover, individuals may revoke their consent at any time.[3] In addition, the Second and Seventh Circuit's standard promotes the exclusionary rule's policy, which is to punish law enforcement for flagrant

[2] See *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).
[3] See *United States v. Dubon*, 135 F.4th 202, 205 (4th Cir. 2025).

misconduct. For example, the court can punish law enforcement officers where it is objectively obvious that the container searched does not belong to the consenter.

Accordingly, the Court should affirm the Fourteenth Circuit's adoption of the standard followed by the Second and Seventh Circuit because this Court does not owe deference to the D.C. Circuit as it imposes an impossible burden on law enforcement.

D. The police acted pursuant to a reasonable belief that Reiser had apparent authority to consent to the search of the cardboard box.

The Fourth Amendment protects "people, not places." *Katz*, 389 U.S. at 351. At the core of the Fourth Amendment stands the right of an individual to be free from unreasonable government intrusion. *Silverman v. United States*, 365 U.S. 505, 511 (1961). As a result, a warrantless search is presumed unreasonable. *Rodriguez*, 497 U.S. at 181. "The government can rebut that presumption by showing that the police, despite lacking a warrant, were permitted to undertake the search by someone with authority." *United States v. Peyton*, 745 F.3d 546, 552 (D.C. Cir. 2014). Where the consent comes from one other than the target of the search, the search can still be reasonable if it comes from "a third party who possesses common authority over . . . the premises or effects sought to be inspected." *Matlock*, 415 U.S. at 171. Consent can also come from a person who does not actually use the property if, pursuant to apparent authority, it is reasonable for the police to believe she uses the property. *Rodriquez*, 497 U.S. at 186. "Such 'apparent authority' is sufficient to sustain a search because the Fourth Amendment requires only that officers" factual determinations in such situations "always be reasonable," "not that they always be correct." *Peyton*, 745 F.3d at 552 (quoting *Rodriguez*, 497 U.S. at 185). The Court is to review whether the officer possessed a reasonable belief that a consenting individual has such authority under de novo review. *Peyton*, 745 F.3d at 552.

In determining whether the officer possessed a reasonable belief, officers may procced on the basis of the "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *United States v. Whitefield*, 939 F.2d 1071, 1074 (D.C. Cir. 1991) (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)). In the context of closed containers, it is ***not*** the rule where an officer "having determined that a person has common authority over an apartment, [must] separately confirm her authority over every closed container in the apartment before relying on her consent to conduct a search." *Peyton*, 745 F.3d at 553. In many instances the "person's common authority over the larger area (say, the living room) will make it reasonable for the police to believe that she shares use of its containers." *Id.* As a result, the individual will have "apparent authority over those spaces[,]" except where the circumstances make it obvious that the container exclusively belongs to another. *Id*; *Snype*, 441 F.3d at 136.

In determining the types of containers over which common authority appears to extend, the following factors may be considered: (1) whether it is secured; (2) whether it is commonly used for preserving privacy; *United States v. Block*, 590 F.2d 535, 541 n.8 (4th Cir. 1978); (3) the government's knowledge of the third party's use of, control over, and access to the container, *Basinski*, 226 F.3d at 834; (4) the nature of the container; (5) the presence of external markings indicating ownership. *Id.* at 834-5.

To establish that apparent authority is not applicable, it must be shown that the officer did not possess a reasonable belief that the consent did not extend to the container. *Melgar*, 227 F.3d at 1041. "Generally, consent to search a space includes consent to search containers within that space where a reasonable officer would construe the consent to extend to the container." *Id.* However, where the police have definite information that the item to be searched does *not* belong

to the person who consents, the police will not possess a reasonable belief. *Id.* For example, the Seventh Circuit in *Melgar*, held that there was no violation of the Fourth Amendment where the police had no reason to believe that Valasquez could not consent to the search of the floral purse. *Id.* at 1042. Thus, Valasquez's consent to an open-ended search of the room reasonably extended to the purse. *Id.* The police obtained open-ended consent to search the entire room from Velasquez, who rented the room along with another women. *Id.* A floral purse—with no personalized marking on the outside—was found under the mattress. *Id.* at 1040. The court reasoned that although at least one other woman was staying in the room with Valesquez, "there were no exterior markings on the purse that should have alerted them to the fact that it belonged to another person." *Id.* at 1041-2.

Similarly, the Second Circuit in *Snype* held that there was apparent authority where the defendant, Snype, was staying with the consenter. *Snype*, 441 F.3d at 136. The Court held that the consenter could authorize the search of the container—a knapsack and red plastic bag—where it was not obvious that the container did not belong to him. *Id.* The police were investigating an armed robbery when they subsequently arrested the defendant, Snype, within an apartment owned by the consenter, Bean. *Id.* at 126. Lying in plain view on the bedroom floor where Snype was arrested, there was a knapsack, a red plastic bag, and a box taken from the bank during the robbery. *Id.* at 127. Police subsequently obtained Bean's consent to search her residence, and as a result, the police searched the containers. *Id.* The court concluded that the officer had a reasonable belief that Bean could consent to the search of the containers because the officers never saw the defendant carrying the containers, there were no markings on the exterior of the containers linking them to the defendant, nor was there anything within the bedroom that would indicate that this was the defendant's personal bedroom. *Id.* at 136-7.

The Sixth Circuit in *Cork* held that there was a reasonable belief that Cork's aunt had authority to consent to the search of the shoebox because it was not obvious that the container did not belong to her. *United States v. Cork*, 18 Fed. Appx. 376, *384 (6th Cir. 2001). The shoebox was found underneath the bed that Cork shared with the Aunt's minor son and Cork failed to seal the shoebox, mark it in a manner to demonstrate exclusive possession or that the contents were private. *Id.* Lastly, Cork did not conceal the shoebox in the bedroom; instead, he stored it next to other shoeboxes in the common area under the bed. *Id.* The court reasoned that the aunt's common authority over her minor son's bedroom extended to the shoebox because it was not obvious that it did not belong to her as "Cork did not manifest any expectation of privacy." *Id.*

In contrast, the Fourth Circuit in *Block* held that the officers did not possess a reasonable belief that another resident of the home had the authority to consent to the search of the locked footlocker trunk. *Block*, 590 F.2d at 541. The trunk was placed two feet from the bed in the defendant's room. *Id.* On the day of the search, the police arrived at Block's residence where he resided with his mother. *Id.* Block's mother gave the officers consent to search the home. *Id.* When the officers came upon a bedroom, the mother informed them that the room belonged to Block. *Id.* Upon entering the room, lying in plain view, they saw a closed and locked footlocker trunk that sat within two feet of the bed. *Id.* The officers were told that the trunk exclusively belonged to Block. *Id.* The trunk required a key to open it, which the mother stated she did not have. *Id.* As a result, the police forced the trunk open and discovered heroin. *Id.* The court reasoned that although the mother had authority to consent to a search of the room because she frequently accessed it, her consent did not extend to the interior of the trunk, as the defendant maintained an expectation of privacy in it. *Id.* at 541. The court explained that the mother

explicitly told the officers that she did not have access to the interior nor did it belong to her. *Id.* Moreover, the footlocker was locked and within the intimate areas of the bedroom. *Id*. As a result, the circumstances surrounding the search made it obvious that the mother did not have authority over the footlocker. *Id.*

The D.C. Circuit in *Peyton* held that there was no reasonable belief that the grandmother could consent to the search of the shoebox. *Peyton*, 745 F.3d at 553-4. The grandmother informed the officers that the area of the living room was used as the defendant's personal bedroom, and that the defendant kept his personal property in the area where the shoebox was found. *Id.* at 553-4. The court reasoned that the grandmother's clear statements that the area of the room was not hers strongly suggested that she did not use the shoebox or have permission to do so. *Id.* at 554.

The Sixth Circuit in *Taylor* held that there was no reasonable belief to support that the female tenant had apparent authority where it was obvious that the container did not belong to the consenter. *United States v. Taylor*, 600 F.3d 678, 679, 680 (6th Cir. 2010). The police discovered a closed shoebox labeled for a pair of men's basketball shoes and was partially covered by men's clothes. *Id.* The shoebox was also hidden in the corner of a closet in a spare bedroom that contained additional men's clothes; the female tenant also stated that she did not use the closet, rather she had been letting the defendant store his belongings in the closet. *Id.* (The court held that "under these circumstances, a reasonable person would have had substantial doubts about whether the box was subject to mutual use by the [female tenant])." *Id.* at 682.

Lastly, the Ninth Circuit in *Davis* held that there was no reasonable belief that the female tenant, Smith, had the authority to consent to the search of the defendant's bag that was found closed and hidden underneath his bed. *Davis*, 332 F.3d at 1170. (The court held that the "officers

were aware that Davis's belongings were in a specific area separate from Smith belongings," thus they could not reasonably believe that she had control over them). *Id.*

In this case, the agents reasonably believed that Reiser's common authority over the cabin extended to the bottom of the stairs, including the cardboard box, as it was not obvious that the container did not belong to Reiser. The petitioner also had a diminished expectation of privacy in the cardboard box because he stored it in at the bottom of the stairs, a common area of the cabin, and he took no steps to protect it from intrusion. This case is analogous to *Melgar*, *Snype*, and *Cork*, but unliked *Block*, *Peyton*, *Taylor*, *Davis*. In *Melgar*, *Snype*, and *Cork* the consenter possessed common authority over the general area searched; the consenter did not disclaim access to the container; the container bore no exterior markings indicating it belonged to another person. Additionally, the container was unsecured by any lock, tape or seal and was neither concealed nor separated from others' belongings in a manner suggesting an intent to protect privacy. Accordingly, in each case, law enforcement reasonably believed that the consenters' authority extended to the containers because the defendants took no steps to protect the container from intrusion by others, supporting the conclusion that the containers were subject to mutual use. The same reasoning applies here. The agents reasonably believed that Reiser's open-ended consent extended to the cardboard box because there was no indication that it was excluded from mutual use; the petitioner likewise had a diminished expectation of privacy after storing the cardboard box in a common area of the cabin and failing to protect it from intrusion. A reasonable officer would therefore conclude that the cardboard box was under mutual use, and Reiser possessed apparent authority to consent to its search.

Unlike the defendants in *Block*, *Peyton*, *Taylor, Davis*, whose Fourth Amendment rights were violated because the facts did not support a reasonable belief that consent extended to the

containers, the facts here clearly support such a belief. In those cases, the defendants took steps to protect the containers from intrusion: the containers were not stored in common areas, were secured or concealed, bore exterior markings indicating exclusive ownership, and the consenter explicitly disclaimed access. As a result, the courts held that there was no apparent authority, because the surrounding circumstances did not reasonably suggest mutual use. Here, by contrast, the petitioner took no steps to protect the cardboard box from intrusion. It was stored at the bottom of the stairs, a common area of the cabin, where Reiser had easy access. The box, while closed, was not secured, or sealed; it bore no exterior markings indicating exclusive ownership; and Reiser did not disclaim possession or access. The surrounding circumstances therefore demonstrate that a reasonable officer would conclude the box was under mutual use by Reiser and the petitioner. Finally, holding that law enforcement lacked a reasonable belief of mutual use solely due to the defendant's claimed ambiguity would be poor policy and create a slippery slope. If the defendant truly intended the cardboard box to remain private, he could have ensured his privacy by storing it elsewhere or taking steps that would have indicated sole ownership.

The petitioner argues that Reiser lacked apparent authority to consent to the search of the cardboard box because the loft and stairs were spaces dedicated to the petitioner. In support, the petitioner notes that Reiser expressly told Special Agent Ristroph that the loft belonged to the petitioner and that she did not go upstairs. From this, the petitioner contends that the stairs themselves constituted the petitioner's private space, such that Agent Ristroph should have reasonably understood both the loft and the stairs to be outside Reiser's use and control.

This argument, however, fails to explain how the bottom of the staircase—particularly the second step—could constitute a private area. Reiser was a permanent resident of the home and necessarily passed that area when entering and exiting through the front door. The residence's

floorplan further undermines the petitioner's claim. The home has an open layout in which the base of the stairs directly adjoins the living room, which in turn connects to the kitchen, bedroom, and bathroom. (R. at 17.) Given that the cabin is only approximately 750 square feet, it would be implausible to treat such a commonly used area as exclusively private to one resident.

Under these circumstances, it was entirely reasonable for Agent Ristroph to believe that Reiser exercised access to and control over the area where the box was located. It was also reasonable to infer that Reiser could have placed the box at the bottom of the stairs to keep it out of the main walkway.

Accordingly, the evidence establishes that the agents reasonably believed Reiser's authority extended to the cardboard box because it was not obvious that the box did not belong to her. The petitioner took no steps to protect the container from intrusion that would support a conclusion that the area lacked "mutual use." Instead, the evidence shows that the petitioner had a diminished expectation of privacy in the cardboard box because he stored it in a common area of the cabin.

Based on the evidence presented, the Court should affirm the Fourteenth Circuit's ruling, which correctly upheld the denial of the petitioner's motion to suppress because the search did not violate the Fourth Amendment.

III. THE FOURTEENTH CIRCUIT CORRECTLY HELD TO EXCLUDE EXTRINSIC EVIDENCE OF COPPERHEAD'S PRIOR ACADEMIC VIOLATION AND FALSIFIED JOB APPLICATION AS RULE 806 OF THE FEDERAL RULES OF EVIDENCE DOES NOT OVERRIDE RULE 608(b)'S EXPLICIT BAN ON EXTRINSIC EVIDENCE.

The standard of review of a "district court's evidentiary ruling [is de novo] insofar as it was based on an interpretation of the Federal Rules of Evidence, but review a ruling to admit or exclude evidence, if based on a permissible interpretation of those rules, for an abuse of

discretion." *United States v. Saada*, 212 F.3d, 210, 220 (3rd Cir. 2000). The Federal Rules of Evidence provide the evidentiary framework that courts apply when determining the admissibility of evidence. Fed. R. Evid. 102. The purpose of the Rules is construed to secure fairness, "eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination." Fed. R. Evid. 102.

Rule 404(a) generally prohibits character evidence to show propensity to act in accordance with that character. Fed. R. Evid. 404(a). However, Rule 608(b) permits parties to impeach a witness while on cross-examination by inquiring into specific incidents of prior untruthful acts to suggest that the witness has an untruthful character. Fed. R. Evid. 608(b). If the witness denies the prior untruthful act, the cross examiner cannot introduce extrinsic evidence to prove that the conduct occurred, unless Rule 609 applies. Fed. R. Evid. 608(b). When a declarant is unavailable to appear as witness, Rule 806 allows parties to attack a declarant's credibility. Fed. R. Evid. 806. Parties may impeach declarants in the same manner that they may impeach witnesses, using any tools recognized in Article VI impeachment tools. Fed. R. Evid. 806.

The Third Circuit in *Saada* prohibited the admission of extrinsic evidence and held that Rule 806 does not modify Rule 608(b)'s explicit "ban on extrinsic evidence of prior bad acts in the context of hearsay declarants, even when those declarants are unavailable to testify." *Saada*, 212 F.3d at 221. The court reasoned that "Rule 806 allows for impeachment of a hearsay declarant only to the extent that impeachment would be permissible had the declarant testified as a witness, which, in the case of specific instances of misconduct, is limited to cross-examination under Rule 608(b)." *Id.* at 221. The court further explained that the prohibition on extrinsic evidence upholds the policy outlined in 608(b)'s ban, which is to "avoid minitrials on wholly collateral matters which tend to distract and confuse the jury . . . and to prevent unfair surprise

arising from false allegations of improper conduct." *Id.* at 222 (quoting *Carter v. Hewitt*, 617 F.2d 961, 971 (3rd Cir. 1980)). Lastly, the court rejected the argument that a hearsay declarant's unavailability forecloses a party's ability to impeach the declarant. *Id.* at 221. The court explained that a party may impeach a hearsay declarant using other recognized impeachment methods, including questioning the testifying witness about the declarant's prior bad acts, without referencing extrinsic evidence. *Id.* Rule 608(a) allows impeachment with opinion and reputation evidence. *Id.* Rule 609 permits evidence of criminal convictions, and evidence of prior inconsistent statements under Rule 613. *Id.*

In contrast, the Second Circuit in *Friedman* held that extrinsic evidence may be admissible to impeach an unavailable hearsay declarant where the evidence has probative value. *United States v. Friedman*, 854 F.2d 535, 570 n.8 (2nd Cir. 1988). The court reasoned that due to the declarant's absence, there is no opportunity for cross-examination, and resorting "to extrinsic evidence may be the only means of presenting such evidence to the jury. *Id.*

In this case, the court should affirm the Fourteenth Circuit holding and adopt the standard followed by the Third Circuit, as it represents the best interpretation of the Federal Rules of Evidence and gives full effect to congressional intent. This standard also upholds the policy underlying Rule 608(b)'s ban on extrinsic, which is to avoid jury confusion and unwarranted delay arising from collateral matters that are relevant solely to a witness's creditability rather than to a fact of consequence. By contrast, the Second Circuit's standard disregards Congressional intent in its explicit ban on extrinsic evidence and would erode judicial efficiency by permitting mini trials on collateral issues, thereby distracting and confusing the jury from central issues.

The petitioner argues that he is entitled to impeach Copperhead's credibility with extrinsic evidence under Rule 806, which provides that a 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. However, the petitioner's argument improperly focuses on the word "any" while ignoring the limiting language that follows. To give effect to congressional intent, the phrase "had testified as a witness" makes clear that impeachment is permitted only to the extent it would have been allowed if the declarant had actually taken the stand, using the impeachment methods recognized under Article VI of the Federal Rules of Evidence. Moreover, had Congress intended for Rule 806 to override or modify Rule 608(b), Congress would have expressly provided such an exception within the text of the Rule.

Accordingly, the Court should affirm the Fourteenth Circuit's adoption of the Third Circuit's interpretation of the rule, as the exclusion of extrinsic evidence was consistent with the limitations imposed by Rules 806 and 608(b).

CONCLUSION

For the foregoing reasons, this Court should uphold the decision from the United States Court of Appeals for the Fourteenth Circuit. The petitioner's Fourth Amendment and Federal Rules of Evidence claims are without merit, and the motions to suppress were properly denied in their entirety.