No. 25-7373

In the

Supreme Court of the United States

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Appellee.

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

Team 35's Brief.

OPINIONS BELOW

The Fourteenth Circuit's opinion is unpublished, but available in the record. (R. 51-58.) The transcripts of the Motions to Suppress and Trial Proceedings are unpublished, but available in the record. (R. 18-39 and R. 40-51).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case is on appeal from a denied motion to suppress and a judgment of conviction in the United States District Court for the Northern District of Boerum against a claim under 18 U.S. Code § 1201(a)(5) and 18 U.S. Code § 1201(d). This appeal concerns violations of the Petitioner's Fourth Amendment rights under the Fourth Amendment's reasonableness requirement for an arrest without a warrant. U.S. Const. amend IV.

The Fourth Amendment to the United States Constitution Provides:

> 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.

The United States Code provides:

> Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

U.S. Code § 1201(a)(5).

The United States Code also provides, "Whoever attempts to violate subsection (a) shall be

punished by imprisonment for not more than twenty years." (18 U.S. Code § 1201(d)).

STATEMENT OF THE CASE

I. Statement of Facts

On April 15, 2024, FBI Agents arrested Atticus Hemlock for attempting to kidnap a federal official in violation of 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d). (R. 12). A Grand Jury charged one count of attempted kidnapping of a United States Government Officer.

On March 29, 2024, the Boerum Village Police Department received a call from a barista at a local coffee shop, Elvis Hoag. (R. 7). In this call, Hoag described he was concerned about two patrons who sounded like they were planning to kidnap a federal official. (R. 7). Hoag identified the two individuals as Atticus Hemlock and Iris Copperhead. (R. 7). Hoag explained the individuals stayed from 8:30am to 12:30 pm with a spread of papers, posters, notebooks, binders, and backpacks over the table. (R. 7). Specifically, a poster that contained some sort of timeline, with dates, times of day, and arrows, and another poster containing a map of a parking lot and a school building. (R. 7). The two individuals repeatedly referred to someone named "Jodie", and where the best place to grab her. (R. 7).

On March 30, 2024, Tina Caplow called the Boerum Village Police Department to report a suspicious cash purchase at Every-Mart in Boerum Village. (R. 6). Being the manager, Caplow called the police because she found the purchase of a pack of zip ties, two ski masks, a six-inch folding knife, black trash bags, and bear spray paid with cash to be suspicious. (R. 6).

The police alerted the FBI as both messages referenced a federal agent. (R. 52). FBI Special Agents Hugo Herman and Ava Simonson were assigned the case. (R. 52). On April 2, 2024, Special Agents followed up with Caplow and Hoag. (R. 52). Hoag identified the two individuals as Iris Copperhead and Atticus Hemlock from social media. (R. 7).

On April 2, 2024, around 4 pm, Herman and Simonson drove an unmarked car to Hemlock's residence, a small cabin. (R. 52). Hemlock lived there with his girlfriend, Fiona Reiser, since May of 2023. (R. 52). The cabin was in the woods, roughly three-quarters of a mile from the farmer's residence and five hundred feet from one of Joralemon State Park's walking trails. (R. 52).

When the Special Agents arrived, they intended to speak with Hemlock regarding the coffee shop and the store. (R. 52). Agent Simonson knocked on the door and stood in front of the stairs leading up to the home. (R. 21). Simonson identified herself and asked to speak with Hemlock outside. (R. 52). Hemlock refused, and the Agents continued to speak through the screen door. (R. 52). Agent Herman observed, through the screen door, two bottles of chloroform. (R. 52.) When asked, Hemlock said not to worry about the bottles and blocked Herman's view, (R. 52). Hemlock also asked if the Agents were there because of "Jodie", despite Agents not mentioning the purpose of their visit. (R. 52). Special Agents returned back to their car to discuss the next course of action. (R. 22). The Agents determined that there was probable cause to arrest Hemlock in light of the chloroform bottles and asking about Jodie. (R. 22). The Agents called in for another agent to assist, Special Agent Ristroph. (R. 53). The Agents again approached the door and asked Hemlock to come outside to which Hemlock agreed. (R. 23). Once outside, the Agents arrested Hemlock for attempting to kidnap a federal official. (R. 23). The Agents executed a search incident to arrest and obtained an open, spiral-bound notebook from Hemlock's pocket. (R. 23). The notebook was open to two pages detailing Hemlock and Copperhead's plans to kidnap the federal official, Jodie Wildrose. (R. 53). The Agents asked Ristroph to remain and wait for Hemlock's girlfriend to come back to the cabin. (R. 53).

At the same time, Copperhead was on her way to Hemlock's residence. (R. 53). Another

individual, Theodore Kolber, saw Copperhead moments after Copperhead observed Hemlock's arrest. (R. 53). Kolber observed Copperhead burst through the woods, appearing disheveled, distressed, and upset. (R. 53). When Kolber asked Copperhead if she was okay, she responded "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!" before running off. (R. 53). Copperhead was later arrested in the evening of April 2, 2024. (R.53). Later that evening, Copperhead died from an acute aortic rupture. (R. 53).

On April 2, 2024 around 4:30pm, Ristroph arrived at the cabin, and waited for Reiser, Hemlock's girlfriend, to arrive. (R. 53.) Once Reiser arrived, Ristroph knocked on the door of the cabin, introduced himself as an FBI agent, informed Reiser of Hemlock's arrest, and stated that Ristroph was at the premises to investigate. (R. 53.)

Ristroph asked if he could take a look around the cabin, and Reiser allowed him to go inside. (R. 53.) While in the living room, Ristroph observed a set of stairs in the adjacent area and asked if Reiser slept on the second floor. (R 53.) Reiser did not sleep on the second floor, informing Ristroph that they slept on the first floor. (R. 53). Reiser stated that the second floor was a loft, used by Hemlock for storage and as an office space. (R. 53). Ristroph never went upstairs. (R. 53). However, Ristroph observed a cardboard shipping box at the bottom of the stairs on the second to last step. (R. 53). The box was closed and had no external marking or writing on the box. (R. 53). Ristroph opened the box, to no objection from Reiser, and found a length of rope, a folding knife, a collection of zip ties, a roll of duct tape, two black ski masks, one pair of gloves, and two bottles of chloroform. (R. 53). Ristroph seized the box and its contents as evidence against Hemlock. (R. 53).

Hemlock was indicted for the attempted kidnapping of an officer of the United States

government on account of the officer's duties under 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1202(d).

II. Procedural History

On August 5, 2024, Atticus Hemlock's trial began. (R. 53.) Before the trial, Hemlock moved to suppress the notebook that was seized during his arrest, arguing that the arrest was illegal under *Payton v. New York*, and thus, the notebook was the product of an illegal seizure. (R. 53.) Hemlock also moved to suppress the contents of the cardboard box because Reiser lacked authority to consent to the search of the box. (R. 54.) The District Court denied both motions, holding both the arrest and the search of the cardboard box were both constitutionally permissible. (R. 54.)

During the trial, the Government called Kolber to testify about the statement made by Copperhead on April 2, 2024. (R. 54.) The District Court allowed Copperhead's statements as evidence as hearsay under the excited-utterance exception to Rule 803(2). Hemlock attempted to impeach Copperhead's credibility as a hearsay declarant pursuant to Rule 806 of the Federal Rules of Evidence through extrinsic evidence. (R. 54.) Hemlock attempted to introduce into evidence a report detailing academic dishonesty by Copperhead, a falsified job application misrepresenting Copperhead's academic credentials, and to have a witness authenticate and testify to the contents of the document. (R. 54.) The Government objected, arguing Rule 806(b) precluded admission of such extrinsic evidence of specific conduct. (R. 54.) The District Court sustained the objection, and Hemlock was precluded from introducing any of the documents or any witness testimony related to Copperhead's alleged misconduct in these two instances. (R. 54.)

Hemlock was found guilty by a jury of 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) and sentenced to ten years in prison. (R. 54.)

Hemlock filed an appeal to the Fourteenth Circuit Court of Appeals. (R. 51.) Judge Gora of the Fourteenth Circuit affirmed. *(*R. 58.*).* Atticus Hemlock then petitioned for review, and on December 2, 2025, this Court granted certiorari to consider whether: (1) under *Payton v. New York*, the existence of a constructive entry doctrine, (2) apparent authority to consent the search of a closed container, and (3) the use of extrinsic evidence of specific instances of conduct of a hearsay declarant's character for truthfulness when the declarant's unavailable to testify at trial. (R. 62.)

SUMMARY OF THE ARGUMENT

This Court should affirm the Fourteenth Circuit's denial of the motions to suppress because the Fourth Amendment's protection does not extend to encompass the agent's conduct.

This Court should affirm the denial of suppression because the Fourth Amendment is not violated when law enforcement remains outside of a suspect's home, ask the suspect to step outside, and arrests the suspect outside without a warrant having probable cause. The Fourth Amendment protects against unreasonable searches and seizures, but its core protection of the home applies only when officers physically enter the home. Payton v. New York created a bright line test for the home - officers need a warrant to cross it, but not to arrest a suspect outside the home when they have probable cause.

The "constructive entry" doctrine should be denied. This legal fiction analyzes coercive police commands the same as a physical entry into a suspect's home. This is a misinterpretation of Payton, which focused on actual physical intrusion into the home, not verbal commands from

outside of the home. Historically and constitutionally, Fourth Amendment violations for arrests in the home require a physical trespass, agents need to enter a home under Payton.

Although some circuits recognize constructive entry in extreme, coercive circumstances, others have explicitly rejected it, and this Court should not adopt it. Expanding the Fourth Amendment to include constructive entry would create an unclear, fact-intensive standard that is impractical for law enforcement to apply in real time.

Because officers here never physically entered the home, no Fourth Amendment violation occurred, and the denial of suppression should be affirmed.

This Court should affirm the Fourteenth Circuit below because the Fourth Amendment does not require law enforcement officers to seek clarification when people have voluntarily given consent to a property search. The Fourth Amendment applies an objective reasonableness standard that only requires officers to seek additional information when it is unreasonable to believe that the person who has given their consent does not have authority to give their consent.

The Federal Rule of Evidence 806 does not allow the use of extrinsic evidence of specific instances of conduct to impeach the character for truthfulness of a hearsay declarant who is unavailable to testify. Although Rule 806 allows a party to attack a hearsay declarant's credibility as if the declarant had testified, that permission is still limited by the other Federal Rules of Evidence – mainly limited by other evidentiary rules like Rule 608(b). This rule creates an absolute bar on using extrinsic evidence for the sole purpose of attacking a witness's character for truthfulness. These rules must be read in tandem. Thus, a hearsay declarant is not impeached in ways that would not be allowed if the witness were testifying in person as a live witness. Here, the defense sought to introduce extrinsic evidence and witness testimony of the alleged acts of Copperhead's dishonesty by the declarant for the sole purpose of attacking her character for

truthfulness, strictly forbidden by Rule 608. This Court should not expand Rule 608, as this would significantly undermine the balance of the Rules of Evidence. This would grant an unfair advantage to parties opposing properly admitted hearsay. The trial court and the Fourteenth Circuit correctly excluded the evidence. The language of Rule 608 requires this Court to affirm the Fourteenth Circuit's decision.

Argument

I. THIS COURT SHOULD AFFIRM THE DENIAL OF SUPPRESSION BECAUSE THE FOURTH AMENDMENT IS NOT 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.

This Court should affirm the decision of the Fourteenth Circuit because the protections of the Fourth Amendment are not available if an officer never enters the home of a suspect to arrest him.

The Fourth Amendment of the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. While the Fourth Amendment governs both searches and seizures, the question on appeal is limited to lawfully seized persons. Specifically, whether the Fourth Amendment stretches to include a constructive entry of the home. This Court should not expand the Fourth Amendment. This constructive entry doctrine finds its roots in a misinterpretation of *Payton v. New York*. In order for an arrest to follow the Fourth Amendment, an arrest warrant is not required to arrest a person who law enforcement has probable cause to believe committed a felony. *United States v. Watson*, 423 U.S. 411, 417 (1976) (citing *Carroll v. United States*, 267 U.S. 132, 156 (1925). "To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home." *United States v. Reed*, 572 F.2d 412, 423

(1978).

Payton explained that the Fourth Amendment protects the "unambiguous physical dimensions of an individual's home" *Payton v. New York*, 445 U.S. 573, 589 (1980). Officers need an arrest warrant in order to arrest a suspect inside the home. *Id.* at 590. The line is clear; the threshold may not reasonably be crossed without a warrant. *Id*. There must be a physical entry into the home.

In *Payton*, officers used a crowbar to physically breach the door of an individual's apartment. *Payton* at 576. These officers did not obtain a warrant for an arrest. *Id*. After breaking open the door, the officers noticed a .30-caliber shell casing that was seized and later admitted into evidence. *Id*. The Court determined that there is a " . . . substantial difference between the intrusion which attends an entry for the purpose of searching the premises and that which results from an entry for the purpose of making an arrest, and a significant difference in the governmental interest in achieving the objective of the intrusion in the two instances." *Payton and Riddick*, 45 N.Y. 2d 300, 310, 380 N.E.2d 224, 228-229 (1978). At common law, the question whether an arrest typically arose in civil damages actions for trespass or false arrest. *See e.g.*, *Leach v. Money*, 19 How. St. Tr. 1001, 97 Eng. Rep. 1075 (K. B. 1765). Both of which require a physical entry into the property of another – the home. "If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. *Payton v. New York*, 445 U.S. 573, 602 (1980).

Currently, the doctrine is expressly recognized by the Sixth, Ninth, and Tenth circuit courts. See, e.g., Fisher v. City of San Jose, 475 F.3d 1049, 1065–66 (9th Cir. 2007); United States v. Saari, 272 F.3d 804, 808 (6th Cir. 2001); United States v. Maez, 872 F.2d 1444, 1451 (10th Cir. 1989). However, many of those require the police show of force or threat of force is overwhelming.

For example, in United States v. Morgan, 107 nine-armed police officers surrounded the defendant's home, used a vehicle to block the driveway, aimed spotlights at the house, and used a bullhorn to "summon" the defendant to exit the house. 743 F.2d 1158 (6th Cir. 1984). The Fifth, Seventh, and Eleventh Circuits declined to adopt the constructive entry doctrine. See Knight v. Jacobson, 300 F.3d 1272, 1277 (11th Cir. 2002); United States v. Berkowitz, 927 F.2d 1376,1386 (7th Cir. 1991); United States v. Carrion, 809 F.2d 1120, 1128 (5th Cir. 1987). See also Gori, 230 F.3d at 52 (finding no *Payton* violation without physical entry.)

The Second Circuit analyzed the constructive entry doctrine in United States v. Allen. *United States v. Allen*, 813 F.3d 76 (2d Cir. 2016). The seminal factor decided was that the protections of the Fourth Amendment, as articulated in *Payton v. New York*, 445 U.S. 573 (1980), are primarily triggered by the location of the arrested person, rather than the location or conduct of the arresting officers. *Id*. at 81. Thus, a warrantless arrest of a person inside their home violates the Fourth Amendment, even if the officers themselves do not physically enter the home. *Id*. The Court held, "we believe that this rule provides clear guidance to law enforcement, avoids undue complexities and perverse incentives to householders not to open their doors to inquiring police officers, and most importantly, ensures that the Fourth Amendment protections, which are at their zenith in the home, are adequately protected." *Id*. at 89. In analyzing *Payton*, the Court in *Allen* emphasized the importance of law enforcement crossing the physical threshold into the home.

Here, the agents never physically entered the home of Hemlock when arresting him. (R. 52.) Rather, the officers waited outside, three to four feet from the front door, and only arrested Hemlock after Hemlock voluntarily left his residence. (R. 52.) Further, the agents only asked Hemlock to come outside, but never verbally or physically threatened him to do so. (R. 52.)

The constructive entry doctrine is not an efficient test. In order for the constructive entry doctrine to have merit, the officers must have coerced the individual in the home to come outside of the home to constitute an unlawful arrest. This Court should not create the legal fiction of a "constructive entry" because this creates a fact-intensive analysis that law enforcement officers do not have the luxury to take time to stop and reflect before making a decision. If this Court decides to expand the Fourth Amendment protection, there will be no clear line for officers to apply. The Fourth Amendment clearly states that people have the right to be free from unreasonable searches and seizures "in [] houses". To expand the Fourth Amendment would be contrary to the actual words written in the United States Constitution, that is agents violate an individual's rights when they enter a home - not when the agents are outside the home. Further, since these occurrences are all fact intensive, there would not be some bright line test, rather a lengthy and inconsistent test to be decided after each interaction. A rule that permitted an arrest "across the threshold," but allowed the arrested person to refuse the arrest simply by closing the door, would not be viable, for it would undermine the authority of the police and encourage resistance by those who were aware of the rule. *Washington v. Chrisman*, 455 U.S. 1, 6, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982). A rule that allows for too many exceptions becomes an unworkable rule, and the adoption of a constructive entry doctrine would do just that.

This Court should affirm the Fourteenth Circuit's decision denying the suppression of evidence because the Fourth Amendment was not violated, as the agents did not cross the physical border into the home.

II. The Fourth Amendment does not Require Law Enforcement to inquire into the Ownership of a Closed Container when a Cooccupant has Granted Permission to search the Container.

This issue rests on the longstanding Fourth Amendment doctrine: when officers obtain

voluntary consent to search from a party reasonably believed to have authority over the thing to be searched, that search is reasonable, and therefore, constitutionally permissible.

That is precisely what happened in this case. Special Agent Ristroph searched a box in an area he reasonably believed Ms. Reiser had the authority to allow him to search; therefore, his search was reasonable and not in violation of the Fourth Amendment.

A. Warrantless searches are reasonable when a third party, whom the police reasonably believe possesses apparent authority at the time of the search, gives consent to search.

The search here was reasonable because Special Agent Ristroph reasonably relied upon Ms. Reiser's apparent authority to consent to a search of the property.

The Fourth Amendment protects "the right of the people to be secure . . . against *unreasonable* searches and seizures." This Court, as early as 1973, articulated the principle that warrantless searches are reasonable when a person with authority over the object or place to be searched consents to the search. *See Scheneckloth v. Bustamonte*, 412 U.S. 218 (1977). The Fourth Amendment requires that "consent not be coerced, by explicit or implicit means, by implied threat or covert force." *Id.* at 228.

The person with actual ownership of the item searched does not have to be the person who gives consent. *United States v. Matlock*, 415 U.S 164, 171 (1974). Rather, a person who possesses "common authority over or [an]other sufficient relationship to the premises or effects sought to be inspected" can consent to the search of the effects of another person. *Id.* The prosecution has the burden of proving that the consent was, in fact, freely and voluntarily given. *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968).

The prosecution may show that permission to search was obtained from a third party who: (1) possesses any sufficient relationship to the item to be searched; and (2) it was reasonable for the officer to believe could provide consent to search. In *United States v. Matlock*, the defendant

was indicted for bank robbery. 415 U.S 164, 166 (1974). The defendant was arrested on his front lawn, and when police went to search the house, his girlfriend consented to allow the police to search for "money and a gun," as evidence of the robbery. *Id.* The defendant's girlfriend directed the police to the bedroom where she and the defendant slept. *Id.* There, the officers found $4,995 dollars in cash in a diaper bag in the closet. *Id.* at 166-167.

At trial, the defendant brought a motion to suppress the evidence on the theory that the defendant's girlfriend did not have the authority to consent to the serach. The trial court found the girlfriend's residence was sufficient to show apparent authority to consent. *Id.* at 167. However, the trial court ultimately ruled against the prosecution because it found that the defendant's girlfriend's statements that she and the defendant both stayed in the bedroom were inadmissible hearsay, which made it impossible to meet the prosecution's burden to prove it was reasonable for officers to believe that she was able to consent to the search. *Id.* at 168-69. On appeal, this Court held that the defendant's girlfriend's statements were not hearsay because they were made against her interest (cohabitation out of wedlock was then a crime in Wisconsin) and that the prosecution had met its burden of proof. *Id.* at 177.

Similarly, in this case, the defendant had been arrested before Ms. Reiser got home. (R. 13.) When Special Agent Ristroph asked to search the house that Ms. Reiser and the defendant both lived in as part of the investigation, Ms. Reiser consented. (R. 13.) Ms. Reiser told Special Agent Ristroph that she lived in the house with Defendant, just as in *Matlock*. (R. 15.) The stairs to the loft are readily accessible from the first floor, where the defendant and Ms. Ristroph cohabitate, much like the closet where the money was found in *Matlock*. (R. 17.) In both cases, the evidence was found in a container, and both courts ruled the physical evidence admissible. (R. 57.)

Here, the trial court found, and the Fourteenth Circuit Court of Appeals agreed, both that

Ms. Reiser had a sufficient connection to the house to consent to its search and that her statements were admissible to show apparent authority over the area of cohabitation and the box where the evidence was found. (R. 56.) This evidence allows the prosecution to meet its burden of proof that a reasonable officer would believe that Ms. Reiser had a sufficient connection to the house to consent to its search, and it was reasonable for the officer to believe that Ms. Reirson had the authority to consent. This search should be held constitutional under the third-party consent doctrine because the prosecution was able to meet its burden of proof that Ms. Reiser had a sufficient connection to the house and that it was reasonable for the officer to believe that she had the authority to consent.

Because this search should be held constitutional under the third-party consent doctrine, this Court should hold that the evidence contained in the box should not have been suppressed at trial.

When third parties who have a sufficient connection to the property to be searched, and for whom it is reasonable for the police to believe can provide their consent to search, have apparent authority over spaces cooccupied by defendants. Accordingly, Ms. Reiser had apparent authority to consent to the search of the house and the box.

B. Ambiguity as to "mutual use or control" is irrelevant as to whether proper consent is obtained.

This Court has articulated an objective reasonableness test for officers to apply to searches consented to by third parties. If a reasonable officer would believe that the third party had authority to consent to a search, and the third party gives their consent, then the police may search the property to which the third party consents to have searched.

Sufficient connection can be established in many ways. The inquiry rests "on mutual use of the property by persons generally having joint access or control for most purposes." *Illinois v.*

Rodriguez, 497 U.S. 177, 181 (1990). If a reasonable officer could believe, based on the facts available to them at the time, that the consenting party had authority over the items to be searched, the search is reasonable. *Id.* at 188-89 (1990). The inquiry into whether it was reasonable for law enforcement to believe that a person had authority to consent to a serach is a question of fact, "to which law enforcement officials must be expected to apply their judgment; and all the Fourth Amendment requires is that they [act] reasonably." *Id.* at 186. "Because many situations that confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability." *Brinegar v. United States*, 338 U.S. 160, 176 (1949).

A search can be "reasonable" under the Fourth Amendment even if the third party who consents to the search does not have the authority to provide their consent. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). In *Rodriguez*, a woman who had previously been living with the defendant allowed police officers into the apartment with her key, where the police found drugs. The trial court found that the woman did not have the authority to consent to the search because her name was not on the lease, she did not contribute to the rent, was not allowed to invite others to the apartment on her own, did not have access to the apartment when respondent was away, and she had moved some of her possessions from the apartment. *Id.* at 180. The trial court suppressed the drug evidence in accordance with its ruling. This Court granted Certiorari and overturned the lower courts on appeal, holding that where it is reasonable for officers to believe in good faith that a third party has the authority to consent, the evidence is not subject to the exclusionary rule. *Id.* at 188-89.

This case is analogous because, even assuming that Ms. Reiser did not have actual authority

to consent to a search of the box, it was reasonable for officers to believe that she did, and therefore, the search of the box was not unreasonable. Here, Ms. Reiser had access to the house and allowed Special Agent Ristroph inside. (R. 13.) Ms. Reiser told Special Agent Ristroph that she and Defendant stayed on the bottom floor and that she didn't go upstairs; however, she didn't say anything about the box being Defendant's until after the fact, in her deposition. (R. 15.) The box was sitting on the bottom steps, within easy reach of the area where Ms. Reiser plainly had consent to search. (13, 15-17.) These facts show that it was reasonable for Special Agent Ristroph to believe that Ms. Reiser had the authority to allow the search of the box, which was accessible from the first floor.

This search should be upheld as constitutional because it was reasonable for Special Agent Ristroph to believe that Ms. Reiser had the authority to consent to the search of the box. Because this search was reasonable under the Fourth Amendment, the evidence found should not be subject to the exclusionary rule.

C. Even if situational ambiguity does have an effect on apparent authority, the circumstances here were clear that Ms. Reiser had the apparent authority to consent to the search.

The dissent to the opinion below stated that officers should seek to clarify any ambiguity in the ownership of property before it is searched, but the law does not require police to take such an affirmative step. While it is true that "the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry," *Rodriguez*, 497 U.S. at 188, that is not the case here.

The inquiry remains: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises? *Id.* The answer here is clearly no.

A suspect may delimit the scope of a search to which he consents, but "if his consent would

reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization." *Florida v. Jimeno*, 500 U.S. 248, 252 (1991). To be "unreasonable," generally, the search must go beyond the bounds of the consent that was given. *See Id.* at 251.

The scope of a search is "defined by its expressed object." *Id.* In *Florida v. Jimeno*, the Supreme Court upheld an officer's search of a brown paper bag that was found pursuant to a consent search of a vehicle. *Id.* There, the defendant consented to the officer searching his car with "no explicit limitations" to the search. This Court held that the general consent to search the respondent's car included consent to search containers within that car, which might" contain evidence, and therefore, the scope of the search extended to containers found in the floor of the car. *Id.*

Analogously, in this case, Ms. Reiser allowed Special Agent Ristroph into the house without explicitly limiting the scope of his search. (R. 13, 15-16.) There was one implicit limitation: the upstairs loft, which Ms. Reiser did not have the authority to grant permission to search. However, like the brown paper bag was visible and easily accessible to the officer in Jimeno, the brown cardboard box in this case was visible and easily accessible to Special Agent Ristroph. (R. 13, 17.)

This search was not beyond the scope of the "object of the search" because the box was visible and easily accessible from the first floor, and Ms. Reiser did not limit the bounds of the search. Additionally, this Court has previously held that when consent for a serach is given, and no explicit limitations are given to the officer, the officer may search for whatever their objective is. Therefore, no additional duties to seek further clarification on "ambiguously" owned property, and this search was proper.

Accordingly, the evidence found in the cardboard box is not subject to the exclusionary rule.

D. As a matter of public policy, forcing police officers to resolve ambiguities in the field would be detrimental to policing and judicial economy.

Requiring police to conduct inquiries will slow the policing process, lead to less legally collected evidence, and harm judicial economy, as district courts are forced to make specific inquiries and findings of fact regarding whether there was any ambiguity in the ownership of the object to be searched.

Every year, there are millions of consent searches every year, making up ninety percent of the warrantless searches conducted by police.[1] As the Seventh Circuit acknowledged in *United States v. Melgar*, and the court below agreed, forcing police to make inquiries into the ownership of items before they are searched pursuant to the consent of a person with apparent authority at the first sign of ambiguity would "impose an impossible burden on police officers." 227 F.3d 1038, 1041 (7th Cir. 2000); (R. 56.).

Requiring police officers to ask who owns a particular object after a person has already consented to a search will drastically reduce the number of consented searches, leading to less evidence being properly collected. This requires police to essentially become legal scholars, as they parse in real time whether the owner of an object may, or may not be "ambiguous" based on the officer's subjective knowledge–or even the objective reasonableness of the officer's beliefs.

As evidence is improperly collected pursuant to a subjective standard, there will be more cases that are won or lost on the exclusionary rule, which has a high social cost. *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)("exclusionary rule generates 'substantial social costs,' which

[1]Eva Lilienfeld & Kimberly Veklerov, Note, *Permission to Destroy: How a Historical Understanding of Property Rights Can Rein in Consent Searches*, 108 Va. L. Rev 1055, 1060 & n.19 (2022).

sometimes include setting the guilty free and the dangerous at large.")(internal citations omitted). The justifications for the exclusionary rule as a deterrent to police misconduct are also not met when police officers act reasonably and in good faith during a consent serach. *Herring v. United States*, 555 U.S. 135, (2009)("to the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against its substantial social costs.")(internal citations omitted).

Further, should this Court adopt the "ambiguous" test, defendants will immediately begin frivolously challenging hundreds of thousands of additional consent searches. These searches, which would otherwise be undisputed or simple, objective, reasonable-person analyses, would now put significant strain on state and federal trial court dockets nationwide, as more testimony and delays will have to be incurred. This slowing of the administration of justice will lead to a "trickle up" effect on state and federal appellate courts and this Court, delaying final outcomes of cases as a new wave of interlocutory appeals floods the appellate dockets and courts struggle to apply the new standard.

The best course of action is to affirm the longstanding cases of *Illinois v. Rodriguez*, *Florida v. Jimeno*, and *United States v. Matlock*, settle the circuit split that currently exists on whether subjective ambiguities create an affirmative duty on law enforcement, and adopt a bright-line rule that police officers do not have to inquire into the owner of any property to be searched unless there is a reasonable belief that the consenting party does not have authority over that property. This will lead to the lowest social cost, better serve judicial economy, and provide clear guidance for law enforcement on the ground to effectuate the efficient administration of justice.

III. Under Rule 806, Extrinsic Evidence of Specific Instances of Conduct of a Hearsay Declarant May Not be Admitted to Impeach the Declarant's Character for Truthfulness when the Declarant is Unavailable to Testify at Trial.

Appellants, relying on the dissenting opinion in the circuit court below and the minority

rule among circuit courts, attempt to impermissibly expand the scope of Federal Rule of Evidence 806. In doing so, it opens the door wide to desperate parties attempting to litigate collateral matters for the purpose of tearing down permissible hearsay evidence in an impermissible way.

This Court should deny the expansion of the rules and affirm the Circuit Court below by holding that Rule 806 remains limited.

A. Federal Rule of Evidence 806 is limited in scope.

Hearsay, or statements that a declarant does not make while testifying at the current trial or hearing offered by a party for the truth of the matter asserted in the statement, is an infamously tricky aspect of trial litigation to master. Fed. R. Evid. 801(c).

Generally, hearsay is prohibited by the Federal Rules of Evidence (Rules). Fed. R. Evid. 802 ("Hearsay is not admissible unless any of the following provides otherwise . . . ."). However, there are numerous exceptions to the rule against hearsay and exemptions from the definition of hearsay. *E.g.*, Fed. R. Evid. 803. Rule 806 allows parties to attack the "declarant's credibility." However, the methods of impeachment are expressly limited to only those methods that would otherwise be available if the declarant "had testified as a witness." Fed. R. Evid. 806. Fed. R. Evid. 806. This rule balances fairness for both parties by recognizing that hearsay evidence, when admitted, can be detrimental if not afforded the opportunity to impeach it, but limiting the methods of impeachment able to be used.[2]

The Rules expressly state that "extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack . . . the witness's character for truthfulness." Fed. R. Evid. 608(b). Evidence is "extrinsic," for purposes of Rule 608(b), if it is "offered through

[2] Legal Info. Inst., *Federal Rule of Evidence 806 Notes of Advisory Committee on Proposed Rules*, (Feb. 8, 2026 at 3:30 ET), https://www.law.cornell.edu/rules/fre/rule_806.

other witnesses through documents or other witnesses, rather than through cross-examination of the witness himself or herself."[3] In 2003, the Rules Committee passed amendments to the Rules to clarify that there is an "*absolute prohibition* on extrinsic evidence . . . when the sole reason for proffering that evidence is to attack or support the witness' character for truthfulness."[4]

The dissent in the Fourteenth Circuit below misinterprets the Rules because the opinion fails to read the Rules *in pari materia*. The dissent states, "extrinsic evidence is banned specifically when attacking a witness's character for truthfulness. Here, Defendant does not seek to attack the character for truthfulness of the witness . . . but rather seeks to attack the character for truthfulness of the hearsay declarant, Copperhead." (R. 61). Rule 806 states that the hearsay declarant may be attacked as "if the declarant had testified as a witness." Fed. R. Evid. 806. Extrinsic evidence is not admissible "in order to attack or support the witness's character for truthfulness." Fed. R. Evid. 608. When read in *pari materia*, extrinsic evidence may not be used to attack a hearsay declarant who may only be attacked as a witness otherwise would be.

B. Defense counsel attempted to exceed the scope of Rule 806.

At trial, counsel for Defendant explicitly attempted to examine witnesses and introduce extrinsic evidence to impeach the character of truthfulness of Iris Copperhead, a hearsay declarant introduced through the testimony of Theodor Kolber. (R. 43.)

Defense counsel called Dr. Andrea Joshi to the stand. The prosecution objected, the jury was dismissed, and counsel went into a sidebar with the court. (R. 47). During the sidebar, defense counsel stated:

> Roberts: . . . we would like to introduce into evidence a letter sent to Iris Copperhead by her undergraduate institution outlining an Academic Integrity

[3] 4 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence*, § 608.20[1] (Joseph M. McLaughlin, ed., Matthew Bender 2d ed. (2003)).
[4] Legal Info. Inst., *Federal Rule of Evidence 608 Comittee Notes on Rules–2003 Amendment*, (Feb. 8 2026 at 3:30 ET), https://www.law.cornell.edu/rules/fre/rule_608.

> Policy violation by Ms. Copperhead . . . . This followed a finding of academic dishonesty . . . . As a member of the Board of Academic Integrity at Court Street College who decided upon Ms. Copperhead's guilt and punishment, Dr. Joshi is well-prepared to testify.

(R. 47-48). Defense counsel also indicated that he would call another witness and introduce a second piece of extrinsic evidence.

> Roberts: . . . We also seek to introduce evidence related to Iris Copperhead's falsifying a job application to the Mayor's office from January 2024, where she falsely reported that she had graduated from Court Street College in May 2023. . . . *This piece of evidence goes to Ms. Copperhead's Character for untruthfulness as well*.
>
> . . .
>
> Roberts: . . . the Mayor's Chief of Human Resources, Svetlana Ressler, reviews job applications to the Mayor's office. . . . *Ms. Ressler is prepared to testify as to the falsification of information in Ms. Copperhead's application*.

(R. 48-49)(emphasis added). Defense counsel states outright that both pieces of extrinsic evidence and both witnesses were intended to impeach Copperhead–a hearsay declarant–regarding her character for truthfulness. This is explicitly forbidden by Rule 608.

The trial court acted pursuant to the Rules by excluding the evidence. If the trial court had allowed defense counsel to introduce his intended witness testimony and exhibits, it would have violated Rule 608, and counsel would have gained a windfall under Rule 806. As defense counsel noted himself, "the Rule is meant to place hearsay declarants on equal footing with live witnesses," not to back-foot trial counsel who is able to properly admit hearsay evidence from an unavailable witness. (R. 49).

Notably, there are some potentially permissible uses for the extrinsic evidence that defense counsel could have engaged in with the witness, such as contradiction, prior inconsistent statement, bias, and mental capacity under Rule 404. Fed. R. Evid. 404; *see also United States v. Tarantino*, 846 F.2d 1384, 1406 (1988)(Rule 404 governs the permitted uses of character evidence for "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake,

or lack of accident," not Rule 608).

However, to the extent this is an error by the trial court, it is harmless error. Had the judge allowed the witnesses to testify, their testimony would have been fraught with the likelihood of improperly prejudicing the jury.[5] *Tarantino*, 846 F.2d at 1406 (trial court committed harmless error because although the evidence was admissible for another purpose, it went more to the impermissible use of proving the witness's character than to the permissible uses of Rule 404). Accordingly, it was in the judge's discretion to exclude the evidence at trial to adhere to his duty to prevent the jury from hearing inadmissible evidence. Fed. R. Evid. 103(d)("to the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means")(emphasis added).

The plain text of the Federal Rules of Evidence does not allow extrinsic evidence to be admitted for the purpose of impeaching a hearsay declarant's statement. Judges have a duty to uphold the rules of evidence and prevent inadmissible evidence from reaching the jury. To follow the Defendant's theory would constitute reversible error. This Court should affirm what the plain text already makes clear: extrinsic evidence cannot be used as Defendant argues.

CONCLUSION

This Court should affirm the decision of the Fourteenth Circuit, denying Hemlock's motions to suppress because the constructive entry doctrine is not a valid expansion of the Fourth Amendment, officers are not required by the Fourth Amendment to seek clarification on ambiguously owned property for a consented search, and Rule 608 of the Federal Rules of Evidence prohibit the introduction of extrinsic evidence of specific acts to impeach a hearsay

[5] Stephen A. Saltzburg, *Impeaching the Witness: Prior Bad Acts and Extrinsic Evidence*, 7 Crim. Just. 28, 31 (Winter 1993) ("counsel should not be permitted to circumvent the no-extrinsic-evidence provision by tucking a third person's opinion about prior acts into a question asked of the witness who has denied the act.").

declarant's character for truthfulness.

Respectfully Submitted,

/s/ Team 35

Attorneys for Respondent