

No. 25-7373

In the
Supreme Court of the United States

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Writ of Certiorari
to the United States Court of Appeals
for the Fourteenth Circuit*

BRIEF FOR PETITIONER, ATTICUS HEMLOCK

Counsel for Petitioner

QUESTIONS PRESENTED

- I. Whether it is a Fourth Amendment seizure under *Payton v. New York* when Government officers conduct a warrantless arrest by coercing an individual inside his home to come outside by forcing him to submit to their authority?

- II. Whether it is a search under the Fourth Amendment when a Government officer conducts a warrantless search of an ambiguous closed container located in a shared residence without valid third-party consent?

- III. 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 passed away before trial?

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The transcripts of the hearings on motions to suppress before the United States District Court for the Northern District of Boerum appear on the record at pages 18–39. The transcript of the hearings regarding the evidentiary issues before the Northern District of Boerum appear on the record at pages 40–50. The decision of the United States Court of Appeals for the Fourteenth Circuit, *Atticus Hemlock v. United States of America*, No. 25-7373, was entered on April 14, 2025, and may be found in the record at pages 51–61.

CONSTITUTIONAL PROVISIONS

The text of the following constitutional provision is provided below:

The Fourth Amendment states:

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

U.S. Const. amend. IV.

STATEMENT OF THE FACTS

In late March 2024, the Federal Bureau of Investigation (“FBI”) received two tips regarding a male and female’s suspicious activity in Boerum Village. (R. 20.) One report came from a barista who overheard conversations in the coffee shop, and another came from a store manager who was weary of them purchasing suspicious items. (R. 6–7.) The morning of April 2, 2024, Officers Hugo Herman and Ava Simonson interviewed both the barista and the store manager. (R. 20.) Later that day, the officers went to Atticus Hemlock’s (“Hemlock”) residence, a cabin located in a “densely wooded area” with “no other homes around” and “about 500 feet from a walking path in Joralemon State Park.” (R. 20, 25.)

I. The Officers arrest Hemlock.

Around 4:00 p.m., Officers Herman and Simonson arrived at Hemlock's residence. (R. 11.) They loudly thumped on the door and introduced themselves as "Special Agents with the Federal Bureau of Investigation" there to ask Hemlock questions regarding an investigation. (R. 11.) Hemlock refused to go outside and answer questions. (R. 11.) Despite his refusal, Officer Simonson persisted Hemlock to exit his home. (R. 11.)

At this point, Officer Herman approached the doorway and observed two bottles labeled "chloroform" inside the cabin. (R. 11.) When asked about the bottles, Hemlock informed Officer Herman not to worry about them. (R. 11.) Both officers again demanded Hemlock to come outside, after which Hemlock told them to "leave [him] alone[.]" (R. 11.) The officers continued the encounter, instructing him to calm down and refusing to tell him the purpose of the investigation. (R. 11.) Hemlock then inquired whether the officers' presence was about Jodie Wildrose ("Jodie"). (R. 11.) As Under Secretary for Rural Development, Jodie was scheduled to head informational sessions in Boerum Village High School the following week. (R. 4.) After Hemlock inquired about Jodie, Officer Herman commanded Hemlock to calm down again and informed him they would return to talk another time. (R. 12.) Hemlock stated that he did not want the officers to return nor did he want to talk about Jodie. (R. 12.) Upon returning to their vehicle, the officers determined that they would go back, "get [Hemlock] to come outside[,] and then [] arrest him" without a warrant. (R. 12.) Before heading back to the home, Officer Herman radioed Officer Kiernan Ristroph for backup, just in case. (R. 23.)

Throughout interactions with Hemlock, the officers were wearing their duty belt containing a gun, taser, baton, and handcuffs, amongst other things. (R. 25.) When they approached the home again to make the arrest, both officers' hands were on their holster, and they "yelled" and "shouted" at Hemlock to come outside. (R. 23, 25.) Later, Officer Herman

admitted that seeing two officers touch their guns is intimidating to a layperson. (R. 25.)

Hemlock exited his cabin and stepped onto the ground at the bottom of his porch steps, where he was immediately handcuffed and placed under arrest. (R. 23.) During the arrest, Officer Herman seized Hemlock's diary, a spiral bound notebook, later used against him as evidence. (R. 5, 12, 24.) Officer Ristroph arrived after Hemlock's arrest was complete and Officer Herman informed him to wait for Fiona Reiser ("Reiser"), Hemlock's girlfriend, to conduct a search of the home. (R. 12.)

II. Fiona Reiser allowed Officer Ristroph to search the home.

About twenty minutes after the arrest, Reiser arrived at the home. (R. 13.) Officer Ristroph knocked, informed Reiser that Hemlock was arrested, and that he was "conducting an investigation." (R. 13.) He asked Reiser if he "could take a look around the residence." (R. 13.) When Reiser asked why Hemlock was arrested and what the officer was searching for, Officer Ristroph provided no additional explanation, stating that it was "part of an investigation." (R. 15.)

Reiser allowed Officer Ristroph to enter the home. (R. 15.) Once inside, Officer Ristroph looked around the kitchen and living room, before noticing the stairs to the second-floor loft. (R. 13, 15.) He "pointed across the cabin to the nook where the stairs were, and asked if [Reiser] slept up there." (R. 15.) She said no and pointed to the bedroom next to the kitchen where her and Hemlock slept. (R. 15.) Reiser informed him that the stairs led to the loft "which [Hemlock] used as storage and an office space." (R. 15.) He asked what Hemlock stored in the loft, and she informed him that she "did not know because [she] did not really ever go up there." (R. 15.) After this interaction, Officer Ristroph "walked straight over to the stairs." (R. 16.) He stopped and opened "an old cardboard box" on the steps that had "no identifying information on the outside, and the top flaps were closed." (R. 13, 16.) Reiser believed that Hemlock left it there to

take it upstairs. (R. 16.) She informed Officer Ristroph that she “had never seen the items found in the cardboard box before.” (R. 16.) Officer Ristroph told her that the box was a part of the investigation, and took it with him as he left. (R. 16.)

III. Iris Copperhead’s involvement.

Iris Copperhead (“Copperhead”) was Hemlock’s best friend, and accompanied him on multiple occasions in the days leading up to his arrest. (R. 5–8.) In late March 2024, a barista at a local coffee shop reported that Hemlock and Copperhead sat at the shop for extended periods and appeared to be discussing documents, maps, and timelines. (R. 7.)

Copperhead did not testify at trial. (R. 49.) Instead, the government introduced an out-of-court statement attributed to her through testimony of Theodore Kolber (“Kolber”). (R. 43.) Kolber testified that on the afternoon of April 2, 2024, he encountered a visibly distressed woman in Joralemon State Park who was crying and shaking. (R. 42.) According to Kolber, the woman screamed “I can’t believe I saw him get arrested. It’s all his fault. It was all Atticus’ idea—NOT MINE! I can’t run a business from prison!” (R. 43.)

During trial, following the admission of Copperhead’s out-of-court statement through Kolber’s testimony, Hemlock sought to introduce evidence concerning Copperhead’s prior academic integrity violation at Court Street College and her submission of false information on an employment application to the Mayor’s Office. (R. 47–48.) Hemlock had planned to call Dr. Andrea Joshi, a member of the College’s Board of Academic Integrity, and Svetlana Ressler, the Mayor’s Chief of Human Resources, to testify about Copperhead’s misconduct. (R. 47.) The district court excluded this evidence, ruling that extrinsic evidence of specific instances of conduct could not be used to impeach Copperhead’s credibility under Rule 806 of Federal Rules of Evidence (“Rule 806”). (R. 50.)

Copperhead died from an aortic rupture the same night she was arrested. (R. 46.) Since Copperhead did not testify, Hemlock had no opportunity to cross-examine her regarding either the statement introduced at trial or the excluded extrinsic evidence. (R. 50.) The government relied on her statement to support its theory that Hemlock was the planner of the alleged scheme.

STATEMENT OF THE CASE

On April 3, 2024, a federal grand jury indicted Hemlock on one count of attempted kidnapping of a federal official, in violation of 18 U.S.C. § 1201(a)(5); 18 U.S.C. § 1201(d). (R. 1–2.) Before trial, Hemlock moved to suppress evidence obtained during his arrest and the subsequent search of his residence. (R. 19.) He sought suppression of a notebook seized from his person following what he argued was a warrantless and unconstitutional arrest, as well as the contents of a closed cardboard box recovered during a warrantless search of his home. (R. 19, 31.) The district court denied both motions. (R. 31, 38.)

The case proceeded to trial. Over the defense’s objection, the government introduced an out-of-court statement attributed to Copperhead through the testimony of a third-party witness. Copperhead did not testify at trial and was not subject to cross-examination. (R. 43.) The district court admitted the statement as an excited utterance. (R. 44.) Hemlock sought to introduce extrinsic evidence of specific instances of Copperhead's prior dishonest conduct to impeach her credibility under Rule 806. (R. 47–49.) The district court excluded that evidence, concluding that extrinsic impeachment was categorically barred by 608(b) of the Federal Rules of Evidence (“Rule 608(b”). (R. 50.) The jury ultimately found Hemlock guilty. (R. 51.)

Following his conviction, Hemlock appealed to the United States Court of Appeals for the Fourteenth Circuit. (R. 51.) He raised three issues for the Fourteenth Circuit’s review: (1) whether his warrantless arrest inside his home violated the Fourth Amendment and required

suppression of the notebook seized incident to the arrest; (2) whether the warrantless search of a closed cardboard box in his residence exceeded the scope of any valid third-party consent and required suppression of its contents; and (3) whether Rule 806 permits the introduction of extrinsic evidence of specific instances of conduct to impeach the credibility of a non-testifying hearsay declarant. (R. 51.) The Fourteenth Circuit affirmed the district court's rulings on all three issues. (R. 58.) Hemlock then petitioned this Court for a writ of certiorari, which was granted on all three questions presented. (R. 62.)

SUMMARY OF THE ARGUMENT

Hemlock's Fourth Amendment rights were violated when the Government officers used their authority to coerce Hemlock outside to conduct a warrantless arrest at his home. Although the officers avoided stepping into the threshold of the home, coercing an individual outside for a warrantless arrest is inconsistent with the Fourth Amendment's protection of the home's sanctity. Further, the area immediately at the bottom of the porch steps is a homeowner's curtilage, which is afforded the same protections under Fourth Amendment. The Fourth Amendment does not allow warrantless violations of privacy in an individual's own home. As a result, the officers' actions amounted to constructive entry and the arrest at the bottom of the porch steps was unconstitutional.

Hemlock's Fourth Amendment rights were again violated when the Government officer searched the closed cardboard box. The officer was not reasonable in believing Reiser had apparent authority over an area of the home she does not frequent. Even if he reasonably believed that Reiser had apparent authority, he exceeded the scope of his search when it was explicitly limited. To open the ambiguous box and search it was a violation of privacy afforded by the Fourth Amendment, hence making it an unconstitutional search.

Rule 806 was misapplied by both of the lower courts when Hemlock was barred from introducing extrinsic evidence to impeach Copperhead's credibility. When an out-of-court statement is admitted for its truth, Rule 806 allows the declarant's credibility to be attacked as though the declarant had testified. Since Copperhead did not testify, cross-examination was unavailable, and impeachment through extrinsic evidence was the only meaningful way to test her truthfulness. Rule 806 does not impose a categorical ban on such evidence, and Rule 608(b)'s limitation presumes a live witness subject to cross-examination. Whether impeachment evidence meaningfully bears on a hearsay declarant's credibility should be assessed under normal evidentiary principles. The full assessment of Copperhead's credibility should have been left to the jury.

For the foregoing reasons, this Court should reverse the Fourteenth Circuit's decision.

ARGUMENT

I. The Government's officers, Herman and Simonson violated the Fourth Amendment under *Payton v. New York* by constructively entering Hemlock's home and arresting him without a warrant through coercive conduct.

The Fourth Amendment prevents unreasonable searches and seizures inside the home. *Payton v. New York*, 445 U.S. 573, 586 (1980). As Judge Leventhal noted in *Dorman v. United States*, “[a] greater burden is placed . . . on officials who enter a home or dwelling without consent. Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment.” *Payton*, 445 U.S. at 587 (quoting *Dorman v. United States*, 435 F.2d 385, 389 (D.C. Cir. 1970)). Consistent with this principle, this Court has long held that “absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within.” *Id.* at 587–88.

The touchstone of the Fourth Amendment is reasonableness. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). In applying this standard, courts have recognized that a physical entrance into the home is not determinative of whether a Fourth Amendment violation has occurred. Rather, *Payton*'s rule turns on the location of the defendant—not the officers—at the time of the arrest. *United States v. Allen*, 813 F.3d 76, 85 (2nd Cir. 2016). Absent this approach, officers could evade the warrant requirement by remaining outside the doorway while exerting coercive control over a suspect inside the home. *United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980).

Consistent with this functional approach, this Court has “refused to lock the Fourth Amendment into instances of actual physical trespass.” *Allen*, 813 F.3d at 81–82 (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)). Although *Payton* “draws a firm line at the entrance to the house,” the Court also recognized that “[a] longstanding widespread practice is not immune from constitutional scrutiny,” particularly where “the constitutional standard is as amorphous as the word ‘reasonable.’” *Payton*, 445 U.S. at 600.

Here, Government officers’ arrest of Hemlock was an unconstitutional seizure because they violated *Payton* by constructively entering Hemlock’s home to carry out a warrantless arrest, conduct that reinforces Fourth Amendment protections of the home and its curtilage. Further, Hemlock submitted to the officers’ authority when they coerced him outside the threshold of his home to arrest him. Accordingly, because the officers violated Hemlock’s Fourth Amendment rights, this Court should reverse the Fourteenth Circuit’s decision and suppress the notebook and materials seized as a result of the unlawful seizure.

A. The Government officers' arrest of Hemlock constituted an unconstitutional constructive entry.

This Court “has repeatedly rejected the claim that police may arbitrarily invade an individual’s expectation of privacy. The Court has declared that ‘at the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.’” *United States v. Morgan*, 743 F.2d 1158, 1165 (6th Cir. 1984) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Currently, a circuit split exists on the determination of constructive entry. *See e.g., Morgan*, 743 F.2d 1158; *Allen*, 813 F.3d 76. The circuits that accept submission to authority that falls under constructive entry are the Ninth and Tenth Circuits. *See generally United States v. Reeves*, 524 F.3d 1161 (10th Cir. 2008); *Johnson*, 626 F.2d 753. Despite this Court’s refusal to lock the Fourth Amendment into instances of physical trespass, the Court has not yet resolved the split.

In *United States v. Saari*, the Sixth Circuit applied *United States v. Mendenhall*’s test where an individual “has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Saari*, 272 F.3d 804, 808 (6th Cir. 2001) (quoting *Mendenhall*, 446 U.S. 554 (1980)). The circumstances include: “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Id.*

Here, this Court should reaffirm the constructive entry doctrine to protect the sanctity of the home because (1) the defendant submitted to officers’ show of authority and (2) the arrest occurred within the home’s curtilage.

1. Hemlock did not reasonably believe that he was free to leave in the face of two officers with visible weapons yelling at him.

The Sixth Circuit has recognized that officers conducting a warrantless arrest by compelling an individual to exit their home, with the original intent to conduct an investigatory stop, constitutes constructive entry. In *Saari*, four officers initially responded to a report of a shooting. 272 F.3d 804, 806. Upon arrival, officers learned of defendant's suspicious activity. *Id.* Two officers approached defendant's apartment with their weapons drawn while the other officers positioned themselves nearby. *Id.* The two officers knocked forcefully and identified themselves as police. *Id.* While defendant was inside the doorway, "the officers had their weapons pointed at him and instructed him to step outside." *Id.* The defendant later testified that he complied because he was ordered to do so and he was afraid of being shot. *Id.*

Although the officers never physically entered the apartment, the Sixth Circuit held that defendant's warrantless arrest violated the Fourth Amendment. *Saari*, 272 F.3d 804, 809. Applying the *Mendenhall* test, the court concluded that the defendant was seized while still inside his home because a reasonable person in his position would not have believed that they were free to leave. *Id.* at 808. The court emphasized that both an "investigatory detention" and a "full-blown arrest" are seizures subject to Fourth Amendment scrutiny. *Id.* at 809 (internal citations omitted). The court rejected the Government's argument that the "officers [were] responding to a swiftly developing situation" because "[d]efendant was peaceably occupying his home when the officers arrived, [] there was no proof that anyone was being threatened inside[,] and the information officers received did not create an immediate threat. *Id.* at 810.

The Sixth Circuit reaffirmed this reasoning in *Morgan*. *See generally* 743 F.2d 1158. In *Morgan*, officers responded to defendant firing shots in the park and later surrounded his home. *Id.* at 1160–61. The officers ordered defendant to come outside of his home where he was

arrested without a warrant. *Id.* at 1161. The court held that Morgan’s Fourth Amendment rights were violated when a warrantless arrest occurred due to constructive entry, reasoning that he only appeared at the door because he was coerced to. *Id.* at 1166. The court rejected the government’s argument that defendant “voluntarily exposed himself to a warrantless arrest,” explaining that “it is the location of the arrested person, and not the arresting agent, that determines whether an arrest occurs within a home.” *Id.* (quoting *Johnson*, 626 F.2d at 757).

Here, Hemlock did not reasonably believe that he was free to leave. Similar to the defendant in *Saari*, Hemlock was confronted by multiple officers investigating a situation based on reports of suspicious activity. (R. 11, 20.) Although initially, their conversation was limited because Hemlock declined to speak with the officers, merely viewing the chloroform bottles and hearing Hemlock ask about Jodie induced the officers to return and make contact. (R. 11–12.)

Similar to the defendant in *Saari*, the officers here compelled an uneasy Hemlock to come outside of his home by using authoritative commands with the presence of their gun and taser. (R. 23, 25.) The circumstances here align with the *Mendenhall* circumstances described by this Court. As in *Saari*, two officers, Herman and Simonson, were positioned at the door against one defendant. (R. 23.) Hemlock was aware they were officers due to their prior interaction, and isolated since nobody but Hemlock was around. (R. 11, 25.) Even Officer Herman admitted that seeing two officers place their hands on their guns would intimidate a civilian. (R. 25.) All of these circumstances occurred while Hemlock was within the threshold of his home while the officers stood outside. (R. 23.) Hemlock did not “voluntarily expose himself to a warrantless arrest” like the government in *Morgan* tried to argue. 743 F.2d 1158, 1166. As such, the officers’ conduct constituted a constructive entry.

The Government might argue that this was an investigatory stop because they came to Hemlock's residence to simply conduct an investigation. (R. 11.) However, the *Saari* court specified that both an investigatory detention or arrest can be seizures under the Fourth Amendment. The Government might also argue that the officers needed to dispel an immediate threat, but the facts and timeline show otherwise. The officers showed up on April 2, but the earliest Hemlock's crime could have been committed against Jodie was a week later. (R. 4, 20.) Even the argument of officers "responding to a swiftly developing situation" does not apply because when the officers arrived, Hemlock was peacefully in his home and nobody was being threatened inside. (R. 11–12.); *Saari*, 272 F.3d 804, 810. This Court has been clear that there needs to be a clear threat of violence or preservation of evidence to enter someone's home i.e., the warrant exception threshold is very high when it comes to homes. *See generally Stuart*, 547 U.S. 398 (2006).

As Judge Kim of the Fourteenth Circuit correctly pointed out in their dissent, "the legal definition [of an arrest] goes beyond [a suspect being handcuffed]." (R. 59.) As aforementioned, this Court concluded that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Mendenhall*, 446 U.S. at 554. Later, this Court stated that "[a]n arrest requires either physical force [] or, where that is absent, *submission* to the assertion of authority." *Cal. v. Hodari D.*, 499 U.S. 621, 626 (1991) (emphasis in original). This Court expanded on *Mendenhall* to show that an individual is subject to seizure by a "show of authority" based on an objective standard: "not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person." *Id.* at 628. As such, the officers' behavior

here amounted to a show of authority that reasonably coerced Hemlock to be arrested inside his home.

“Opening the door to one’s home is not voluntary if ordered to do so under color of authority.” *Reeves*, 524 F.3d at 1167. In *Reeves*, four officers were conducting an aggravated assault investigation that led them to defendant’s residence at a motel in the early morning hours. *Id.* at 1164. After calling the defendant and receiving no response, three officers repeatedly yelled and knocked on defendant’s door, identifying themselves as police. *Id.* Eventually, defendant exited the room and was arrested. *Id.*

The Tenth Circuit held that defendant answered his door as a response to the officers’ “show of authority” and was “seized inside his home.” *Reeves*, 524 F.3d at 1169. The court reasoned that the lack of a direct order for defendant to open his door was not dispositive since the “officers’ actions were effectively a command to open the door.” *Id.* at 1168. The officers commanded an arrest because they loudly pounded on defendant’s “door and window while yelling and loudly identifying themselves as police officers[;]” they persisted for approximately twenty minutes; and they were at defendant’s door in the early morning hours. *Id.* at 1168–69. Given the circumstances, a reasonable person “would not feel free to ignore the officers’ implicit command to open the door.” *Id.* at 1169.

The Ninth Circuit also supports submission to authority in the home as a seizure under the Fourth Amendment, evidenced by *Johnson*. *See generally* 626 F.2d 753. In *Johnson*, the court explained that when looking at the circumstances around the arrest, the primary determination is “whether or not the defendant was free to choose between terminating or continuing the encounter with the law enforcement officers.” *Id.* at 755 (internal citations omitted). The court held that the defendant was arrested within the doorway of his home because

the totality of the circumstances demonstrated “extreme[] doubt[] that [defendant] would have believed that he was free to leave at any time or to request the officers to leave after the initial encounter.” *Id.* at 757. The circumstances here included the officers’ weapons and misrepresenting their identities. *Id.*

Hemlock submitted to the officers’ authority. Here, not only did the officers give a direct command, but their actions substantiated the command. (R. 23, 25.) Like the defendant in *Reeves* refusing to respond, Hemlock continued to resist coming outside his home by refusing to exit and answer questions, and telling the officers that he didn’t want anything to do with them. (R. 11–12.) When the officers approached Hemlock’s home again, he remained inside his doorway until they both commanded him out. (R. 23.) Similar to the defendant in *Johnson*, Hemlock’s arrest was perpetuated as he stood within his doorway because he opened his door involuntarily on the officers’ coercion. (R. 12, 23.) As the officers approached, their hands were on their gun holsters and they yelled at Hemlock to exit. (R. 23, 25.) Although this occurred midday, and not in the early morning hours like *Reeves*, the circumstances are looked in their totality. (R. 11.) As such, Hemlock’s isolated position in densely-wooded surrounding land adds to the analysis. (R. 20.) A reasonable person confronted by two officers with weapons who are yelling to exit with nobody else nearby, would not feel like they can ignore the officers. (R. 20, 25.)

2. The Government’s officers arrested Hemlock on his curtilage, thus violating his Fourth Amendment rights to privacy in the home.

The right for an individual to be “free from governmental intrusion” in his own home “would be of little practical value if the State’s agents could stand in a home’s porch or side garden” and violate someone’s Fourth Amendment rights. *Florida v. Jardines*, 569 U.S. 1, 3 (2013). Although an individual has no right to privacy in the open fields surrounding his house, “the area immediately surrounding the home” demands privacy. *Oliver v. United States*, 466 U.S.

170, 178 (1984). As such, this Court regards the curtilage as the “area ‘immediately surrounding the home’ . . . as ‘part of the home itself for Fourth Amendment purposes.’” *Jardines*, 569 U.S. at 6 (quoting *Oliver*, 466 U.S. at 180).

“While the boundaries of the curtilage are generally ‘clearly marked,’ the ‘conception defining the curtilage’ is at any rate familiar enough that it is ‘easily understood from our daily experience.’” *Jardines*, 569 U.S. at 7 (quoting *Oliver*, 466 U.S. at 182). In *Jardines*, the front porch was labeled as a “classic exemplar of an area adjacent to the home and ‘to which the activity of home life extends.’” *Id.* Curtilage “refer[s] to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private.” *Oliver*, 466 U.S. at 180. Questions of curtilage reference the analysis of four factors: “the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken to protect the area from observation by people passing.” *United States v. Dunn*, 480 U.S. 294, 301 (1987). This Court suggested that the combination of these factors did not produce a “finely tuned formula that when mechanically applied, yields a ‘correct’ answer to all extent-of-curtilage questions.” *Dunn*, 480 U.S. at 301. Instead, “these factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration – whether the area in question is so intimately tied to the home itself that it should be placed under the home’s ‘umbrella’ of Fourth Amendment protection.” *Id.*

Here, the area immediately at the bottom of Hemlock’s porch steps where he was arrested is within Hemlock’s curtilage. (R. 23.) The bottom of one’s porch steps demands a reasonable expectation of privacy within the home. It is close in proximity to the house and reasonably used every time Hemlock enters and exits his home. From that position, an individual can act as if

they are already home. As such, the activity of home life extends to that area, and the officers' arrest of Hemlock on his curtilage violate the sanctity of home that is provided by the Fourth Amendment.

II. The search of the box was unconstitutional because officers exceeded the scope of the search.

In *Illinois v. Rodriguez*, this Court stated: “[e]ven when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry.” 497 U.S. 177, 188 (1990). “[W]hat is at issue when a claim of apparent consent is raised is not whether the right to be free from searches has been *waived*, but whether the right to be free from *unreasonable* searches has been *violated*.” *Id.* at 197 (emphasis in original). Reasonability also applies when determining the scope of the consent—“what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

Here, the Government officer’s search of the cardboard box was unconstitutional because Reiser did not have apparent authority over the area where the box was found, conduct that reinforces Fourth Amendment protections of an individual’s privacy. Further, the box was ambiguous and even if Reiser did have apparent authority, the officer exceeded the scope of the search. Accordingly, because the officer violated Hemlock’s Fourth Amendment right, this Court should reverse the Fourteenth Circuit’s decision and suppress the cardboard box and materials found as a result of the unlawful search.

A. Reiser lacked apparent authority over the space in which the container was located when the unconstitutional search occurred.

A third party with common authority may voluntarily consent to a warrantless search. *United States v. Matlock*, 415 U.S. 164, 171 (1974). Common authority arises from “mutual use

of the property by persons generally having joint access or control for most purposes.” *Id.* at 171 n. 7. “Apparent authority does not exist where it is uncertain that the property is in fact subject to mutual use.” *United States v. Peyton*, 745 F.3d 546, 554 (D.C. Cir. 2014). The Tenth Circuit highlighted helpful factors to determine authority: 1) the type of container and if it historically commands a high degree of privacy; 2) the precautions taken by the owner to manifest his subjective expectation of privacy; 3) if the search is conducted upon the initiative of the host for reasons relating to the host’s interest in the safe and secure enjoyment of his premises; and 4) the apparent nature of the consenting party’s lack of interest in the item. *United States v. Salinas-Cano*, 959 F.2d 861, 864 (10th Cir. 1992). “Once ambiguity erases any apparent authority, it is not difficult for searching officers to reestablish the would-be-consenter’s authority.” *United States v. Purcell*, 526 F.3d 953, 964 (6th Cir. 2008). Determining consent requires an objective analysis: “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?” *Rodriguez*, 497 U.S. at 188. “If not, then warrantless entry without further inquiry is unlawful unless authority actually exists.” *Id.*

The Sixth Circuit’s decision in *United States v. Taylor* illustrates how ambiguity over a container’s ownership warrants further inquiry. *See generally* 600 F.3d 678 (6th Cir. 2010). In *Taylor*, officers arrived at an apartment owned by Sabrina Arnett, to arrest defendant. *Id.* at 679. The officers searched the apartment after obtaining consent from Arnett following defendant’s arrest. *Id.* During the search, officers found a shoebox on the floor of a spare bedroom closet surrounded by men’s clothing. *Id.* Without asking who owned the shoebox, the officers opened it and found incriminating material against defendant. *Id.* at 679–80. Afterwards, officers interviewed Arnett where she informed them, among other things, that she “‘didn’t really use the

closet' where the shoebox was found." *Id.* at 680. Additionally, Arnett had never looked in the shoebox. *Id.*

The court held that Arnett did not have apparent authority to consent to the shoebox's search. *Taylor*, 600 F.3d at 685. The court reasoned that upon the officers' finding of the shoebox, they could have asked Arnett if it was hers because even though she was the tenant, the shoebox was found surrounded by men's clothes. *Id.* at 685, 681. The only reason why officers opened the box was "because they believed it likely belonged to Taylor." *Id.* at 681. This showcases that the officer "would have had substantial doubts about whether the shoebox was mutually used by both [defendant] and Arnett." *Id.* Arnett's testimony that she "never looked in the shoebox . . ." added to the Sixth Circuit's analysis against the officer's reasonability. *Id.* at 683. The court compared their prior case, *United States v. Waller*, to state that even if no surrounding items exist to create ambiguity, an ambiguous container may not be authorized for a search. *Id.* at 682–83; *see also United States v. Waller*, 426 F.3d 838, 847-49 (6th Cir. 2005). Lastly, the court reasoned that even if a shoebox does not "historically command a high degree of privacy," "they are often used to store private items." *Taylor*, 600 F.3d at 683.

Here, Reiser did not have sole authority over the cabin because both Hemlock and Reiser rented the cabin. (R. 11–2.) From the outset, Officer Ristroph should have been more mindful of the distinction between shared and private property. Faced with an unmarked, closed cardboard box, Officer Ristroph was unaware of whom it belonged to. (R. 13, 16.) As in *Taylor*, Officer Ristroph made no effort to clarify the box's ownership with Reiser, who was present in the cabin. (R. 13, 16.) Additionally, much like Arnett's lack of use for the closet, Reiser stated that she "did not really ever go up there," indicating that she rarely used the stairs. (R. 15.) Reiser also never looked inside the box, like Arnett "never looked in the shoebox." (R. 16.); *Taylor*, 600 F.3d at

683. Similar to *Taylor*, Officer Ristroph opened the box because he believed it to be Hemlock's. (R. 13.) Otherwise, he would have doubted the mutual use of it. The Government may argue that a cardboard box does not "historically command a high degree of privacy," but this is not dispositive because individuals may often use cardboard boxes to "store private items." *Taylor*, 600 F.3d at 683.

Private effects are recognized as exclusively the owner's, even within a shared space. In *Peyton*, officers went to defendant and his great-great-grandmother's, Martha Hicks', apartment to conduct a search to find drugs. 745 F.3d at 549. Hicks signed a consent form for the officers to search the entire apartment, and they began in the living room. *Id.* As the officers approached defendant's bed, Hicks told them "that part of the living room was 'the area where [defendant] keeps his personal property.'" *Id.* Subsequently, an officer found incriminating material after opening a closed shoebox next to defendant's bed. *Id.* at 550.

The D.C. Circuit held that it was unreasonable for the police to believe that Hicks shared the use of the closed shoebox. *Peyton*, 745 F.3d at 554. The government countered this holding, pointing to "three circumstances that suggest[ed defendant] did not retain a privacy interest in the shoebox": 1) the living room was a common area that has a diminished expectation of privacy for things left there; 2) [defendant] took no special steps to hide or protect the shoebox; and 3) a shoebox is not the type of container that has historically been accorded the highest privacy expectations. *Id.* However, the court declined the government's argument, stating that the officers were required to consider additional context, including the fact that both Hicks and defendant lived in the apartment, so "some spaces in the apartment might be used exclusively by [defendant]." *Id.* The crux of the Court's analysis was Hicks' statement to the police that "[defendant] kept his 'personal property' in the area around the bed, where the shoebox was

found.” *Id.* at 554. In light of this clear statement, it was unreasonable for the police to believe that Hicks shared use of the closed shoebox. *Id.*

Reiser did not have apparent authority over the cardboard box. Although Reiser and Hemlock jointly rented the cabin—as did Hicks and Peyton—and Reiser consented to a search of the cabin, that consent did not extend to the cardboard box. (R. 15.) As the court recognized, private objects in shared spaces are common, and that was the case here too. No evidence in the record indicated that Reiser reasonably shared the cardboard box with Hemlock. The box’s flaps were closed and there was “no identifying information on the outside.” (R. 13.) If this Court only considered that the stairs were connected to the shared space, that no special steps were taken to conceal the cardboard box, and that a cardboard box might not have “historically been accorded the highest privacy expectations,” then it *may* be safe to assume that Reiser had apparent authority. (R. 15–16.) However, this is not the case. As in *Peyton*, the critical fact is that Reiser informed Officer Ristroph that Hemlock used the loft “as storage and an office space” and that she did not know what he kept there because she “did not really ever go up there.” (R. 15.) This statement clearly established that the stairs and loft were not areas that exercised shared use or control, much like the area surrounding the defendant’s bed in *Peyton*. Thus, it was unreasonable for Officer Ristroph to believe that Reiser had shared use of the cardboard box.

B. Even if Officer Ristroph believed that Reiser had apparent authority over the container, he was unreasonable in the scope of the search.

“The Fourth Amendment is satisfied when, under the circumstances, it is objectively reasonable for the officer to believe that the scope of the . . . consent permitted him to open a particular container” *Jimeno*, 500 U.S. at 249. “The scope of a search is generally defined by its expressed object.” *Id.* at 251. While a suspect “may of course delimit as he chooses the scope of the search to which he consents, [] 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.” *Id.* at 252. Here, Officer Ristroph could not have reasonably understood Reiser’s consent to extend to the cardboard box.

In *Jimeno*, the officer pulled over defendant and stated that he believed there were drugs in the car, after which defendant granted general consent to the search. *Jimeno*, 500 U.S. at 249. The officer found a brown paper bag on the floor of the passenger side, opened it, and found cocaine. *Id.* at 250. The Court held that it was “objectively reasonable for the police to conclude that the general consent to search respondents’ car included consent to search containers within that car which might bear drugs.” *Id.* at 251. The Court reasoned that because the purpose of the search was to find narcotics—and narcotics can be stored in a container—consent extended to the brown paper bag. *Id.*

Unlike the officer in *Jimeno*, Officer Ristroph did not know what he was looking for. Officer Ristroph asked Reiser to look around the cabin and did not have an answer even when Reiser asked him what he was looking for, whereas the officer in *Jimeno* clarified that he believed Jimeno had narcotics (R. 13, 15.) Moreover, Officer Herman did not inform Officer Ristroph of the chloroform labeled bottles that were visible to him. (R. 12.) Without stating the purpose of the search, Reiser’s scope of consent could not reasonably be understood to extend to the cardboard box because Officer Ristroph did not specify what he was looking for—only that he wanted to take a look around the cabin. (R. 13.)

The scope may only be exceeded when the consenter explicitly deems it to. In *United States v. Lemmons*, an officer arrived at defendant’s trailer in response to his neighbor’s complaint about secretly video-taping her. 282 F.3d 920, 922 (7th Cir. 2002). This was clear to defendant. *Id.* While the defendant was aware of the purpose behind the officer’s visit, he kept

informing the officer of other incriminating materials in his possession including marijuana, pictures of “a female in her late teens,” videotapes, and polaroids of a minor. *Id.* The defendant further consented to a search of his computer, during which the officer found obscene film involving minors, while defendant stood nearby, permitting the search to occur. *Id.* The court held that defendant “took affirmative steps to aid the officers in their search” by willingly handing the officer the pictures and polaroids and not protesting the officer’s search of the computer. *Id.* at 925. Therefore, defendant expanded the scope of the consent. *Id.*

Here, Reiser did not affirmatively consent for Officer Ristroph to exceed the scope of his search. In fact, Reiser clearly informed Officer Ristroph which areas were shared, such as the bedroom, and what areas were Hemlock’s. (R. 15.) Officer Ristroph specifically pointed to the stairs’ nook and asked about it, to which Reiser’s response was that “the stairs led to the loft, which Atticus used as storage and an office space.” (R. 15.) Reiser did not explicitly nor willingly expand the scope of Officer Ristroph’s search. Reiser limited the scope of Officer Ristroph’s search, but he exceeded it by going to the very area that was deemed Hemlock’s. (R. 16.) He was not invited to search there like the officer in *Lemmons* was invited to search the computer. As such, Officer Ristroph was not reasonable in his belief that his search extended to the stairs that housed the cardboard box.

III. Under Rule 806 of the Federal Rules of Evidence, extrinsic evidence of specific instances of conduct of Copperhead should be admitted to impeach her character for truthfulness when she is unavailable to testify at trial.

The Fourteenth Circuit erred in holding that extrinsic evidence of Copperhead’s prior academic integrity violation and falsified employment application was categorically inadmissible under Rule 806. That holding conflicts with the Rule’s text, structure, and purpose. Further, it improperly insulates hearsay declarants from meaningful credibility testing. Nothing in the Rule excludes extrinsic evidence of specific instances of conduct, and nothing in its text justifies the

categorical limitation imposed by the courts below. Accordingly, this Court should reverse the Fourteenth Circuit's decision and admit the extrinsic evidence.

A. The text and structure of Rule 806 does not impose a categorical bar on extrinsic evidence impeachment.

Rule 806 provides that when a hearsay statement has been admitted, “the declarant’s credibility may be attacked, and then supported by any evidence that would be admissible for those purposes if the declarant testified as a witness.” Fed. R. Evid. 806. By its terms, the Rule authorizes impeachment of a hearsay declarant’s credibility once the statement is admitted for its truth.

Since the Federal Rules of Evidence are a legislative enactment, they are interpreted using ordinary principles of statutory construction. *Beech v. Rainey*, 488 U.S. 153, 163 (1988). Interpretation begins with the text of the Rule, and courts must give effect to that text as written. *Id.* Nothing in Rule 806 expressly prohibits the use of extrinsic evidence of specific instances of conduct to impeach a hearsay declarant, nor does Rule 806 incorporate Rule 608(b)’s limitation on extrinsic proof. When the drafters intended to impose categorical evidentiary limitations, they did so explicitly. Rule 608(b), for example, expressly states that “[s]pecific instances of witness’s conduct ... may not be proved by extrinsic evidence.” Fed. R. Evid. 608(b). The absence of similar limiting language in Rule 806 is significant and should not be overlooked.

The Fourteenth Circuit relied on Rule 806’s phrase “if the declarant had testified” to justify importing Rule 608(b)’s extrinsic evidence prohibition in its entirety into the hearsay context. That reading stretches the text beyond its function. The phrase “if the declarant had testified” identifies the *type* of credibility evidence that may be used, not the procedural conditions under which that evidence must be introduced. Nothing in the text directs the courts to

apply evidentiary limitations designed for live testimony without regard to the declarant's unavailability.

The structure of Rule 806 also confirms this reading. The Rule expressly modifies the ordinary operation of impeachment rules to account for the absence of a testifying witness. In particular, Rule 806 permits impeachment by a prior inconsistent statement regardless of whether the declarant had an opportunity to explain or deny them. Fed. R. Evid. 806. That structural accommodation reflects that impeachment rules may operate differently when the declaration does not appear at trial.

The Government may argue that because Rule 806 explicitly addresses Rule 613(b)'s foundational requirement, its silence with respect to Rule 608(b) must be read as intentional. However, that inference does not follow from the structure of Rule 806. Rule 613(b) imposes a prerequisite that cannot be satisfied when a declarant does not testify, making an express modification necessary. Rule 608(b), by contrast, does not condition the availability of impeachment on the satisfaction of any prerequisite; it limits the manner of impeachment when cross-examination is available. Where the declarant does not testify, that assumption fails, and Rule 806 permits impeachment through other admissible means. Accordingly, nothing in the text or structure of Rule 806 supports importing 608(b)'s categorical bar on extrinsic evidence into hearsay.

B. Courts apply Rule 806 through a context-specific inquiry focused on the credibility of the hearsay statement.

Courts interpreting Rule 806 are divided on whether extrinsic evidence of specific instances of conduct may be used to impeach an unavailable hearsay declarant. Some courts have adopted a rigid approach, reasoning that because Rule 608(b) would bar extrinsic evidence if the declarant testified, the same bar must apply when the declarant does not testify. *See United*

States v. Saada, 212 F. 3d. 210 (3d. Circ. 2000); *United States v. White*, 116. F.3d. 903 (D.C. Cir. 1997). However, that approach misunderstands both the purpose of Rule 806 and the rationale underlying Rule 608(b).

The Third Circuit's decision in *United States v. Saada* illustrates the restrictive approach. There, the government introduced hearsay statements from a non-testifying declarant and sought to admit extrinsic evidence that the declarant had been disbarred for unethical conduct. *Saada*, 212 F. 3d. 210 at 218. The court held that the evidence was inadmissible, reasoning that Rule 806 does not override Rule 608(b)'s bar on extrinsic evidence. *Id.* at 221. In reaching that conclusion, the court stated that other forms of impeachment remained available. *Id.*

The Third Circuit's reasoning is unpersuasive here. *Saada* assumes that the availability of alternative impeachment tools are sufficient to preserve meaningful credibility testing. But, Rule 806 was not intended to guarantee the mere availability of impeachment in theory; it was intended to ensure that impeachment remains meaningful in practice. Where, as here, the hearsay statement plays a central role in the Government's case and the declarant's credibility has not otherwise been tested, theoretical alternatives are not adequate substitutes.

The Second Circuit's decision in *United States v. Friedman* reflects a more accurate reading of Rule 806. In *Friedman*, the court rejected a categorical approach and instead examined whether the proffered impeachment evidence actually bore on the credibility of the hearsay statements admitted at trial. *United States v. Friedman*, 854 F.2d 535, 570 (2d Cir. 1988). The court excluded certain extrinsic evidence not because it was extrinsic, but because it had no logical connection to the declarant's statements relied upon by the government. At the same time, the court approved the admission of extrinsic evidence directly undermining the credibility of other hearsay statements. *Id.*

Thus, *Friedman* makes clear that Rule 806 calls for a context-sensitive inquiry. The question is not whether the impeachment evidence is extrinsic in the abstract, but whether it meaningfully casts doubt on the credibility of the hearsay statement admitted for its truth. That inquiry is property committed to the trial court's discretion and governed by Rule 403.

This approach fits this case precisely. The government introduced Copperhead's out-of-court statements accusing Hemlock of orchestrating the scheme while minimizing her own role. (R. 43.) Copperhead did not testify and could not be cross-examined. (R. 50.) The excluded evidence of her academic integrity violations and falsified employment application directly bears on her character for truthfulness and her motive to shift blame. Unlike the misconduct in *Saada*, this evidence goes to the heart of the credibility determination the jury was asked to make. By adopting a categorical rule rather than engaging in that inquiry, the Fourteenth Circuit misapplied Rule 806.

C. The mini-trial concerns underlying Rule 608(b) are not implicated here.

The Fourteenth Circuit's categorical exclusion of extrinsic impeachment rests in part on concerns underlying Rule 608(b), particularly the risk that admitting evidence of prior misconduct will devolve into collateral mini-trials. As the Third Circuit has explained, Rule 608(b)'s prohibition on extrinsic evidence is designed "to avoid minitrials on wholly collateral matters which tend to distract and concede the jury... and to prevent unfair surprises arising from false allegations of improper conduct." *Saada*, 212 F.3d 210, (quoting *Carter v. Hewitt*, 617 F.2d 961, 971 (3d. Cir. 1980)).

Those concerns, however, do not justify a categorical application of Rule 608(b) in the Rule 806 context. The mini-trial rationale presupposes a live witness who may repeatedly be impeached through cross examination, inviting extended disputes over collateral misconduct. When a declarant does not testify, the risk is substantially diminished. There is no cross-

examination, no repeated impeachment, and no danger that credibility challenges will multiply. The risk is not that impeachment will overwhelm the trial, but that it will not occur at all.

That distinction is critical here. The impeachment evidence Hemlock sought to introduce was narrow, discrete, and readily provable. The excluded evidence reflected Copperhead's academic misconduct and misrepresentations on an employment application, facts bearing directly on the reliability of Copperhead's statement. (R. 47–48.) In fact, Hemlock was prepared to call Dr. Andrea Joshi and Svetlana Ressler to testify about the underlying misconduct. Admitting that evidence would not have required mini-trials over collateral matters. The mini-trials concerns about Rule 608(b) do not justify categorical exclusion in the Rule 806 context.

D. Rule 806 is designed to preserve meaningful credibility testing when the declarant does not testify.

A central feature of the American trial process is the jury's ability to assess credibility through live testimony. Cross-examination allows jurors to observe a witness's demeanor, tone of voice, and choice of words. *United States v. Hamilton*, 107 F.3d. 499, 503 (7th Cir. 1997). These factors play a critical role in determining whether testimony is worthy of belief. *Id.* These observations are fundamental to how juries decide whom to trust.

When a hearsay declarant does not testify, the jury is deprived of the tools it ordinarily uses to assess credibility. The declarant's statement is admitted for its truth, yet the jury cannot observe the declarant's body language, what the declarant's tone is, or evaluate the declarant's responsiveness under questioning. The Advisory Committee recognized this problem explicitly, explaining that the declarant of a hearsay statement which is admitted in evidence is in effect a witness, and his credibility should in fairness be subject to impeachment and support as though he had in fact testified. Fed. R. Evid. 806, Advisory Committee Notes.

Rule 806 was crafted to mitigate that imbalance by ensuring that hearsay declarants are not shielded from credibility scrutiny solely due to their unavailability. The Advisory Committee further acknowledged that impeachment of hearsay declarants presented “special aspects” not present when a live witness testifies, arising from the absence of cross-examination and from the nature of hearsay statements. *Id.* Those “special aspects” require flexibility in how impeachment rules operate rather than applying limitations designed for live testimony without regard to context.

Allowing extrinsic evidence that bears on the declarant’s character for truthfulness serves that purpose. Where cross-examination is unavailable, extrinsic impeachment may be the only means by which the jury can evaluate whether the declarant is worthy of belief. Excluding such evidence leaves the jury with the declarant’s accusation but without any meaningful basis to assess credibility, thereby undermining the fairness the Rule was intended to perverse.

These evidentiary principles also align with the broader constitutional landscape. The Confrontation Clause underscores the importance of meaningful credibility testing when out-of-court statements are admitted against a criminal defendant. As this Court has explained, the Constitution does not permit testimonial statements to be admitted against an accused without confrontation unless strict conditions are met. *Crawford v. Washington*, 541 U.S. 36, 60 (2004).

Rule 806 serves the safeguarding function. It ensures that a hearsay declarant, who functions “in effect” as a witness, does not escape scrutiny simply because the declarant is unable to testify. Interpreting Rule 806 to categorically foreclose extrinsic impeachment evidence defeats the purpose identified by the Advisory Committee and leaves the jury without the tools necessary to perform its credibility-assessing role.

That concern is squarely presented here. Copperhead's out-of-court statement played a central role in the government's case but she was unable to testify or be cross-examined. Permitting the jury to consider extrinsic evidence bearing on her character for truthfulness would not have distorted the trial; it would have restored the balance Rule 806 was designed to achieve.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Fourteenth Circuit and hold that: (1) Government officers Herman and Simonson violated the Fourth Amendment by effecting a warrantless, coercive arrest of Hemlock at his home, requiring suppression of the notebook and other evidence seized incident to that arrest; (2) Officer Ristroph violated the Fourth Amendment by conducting a warrantless search of a closed cardboard box in Hemlock's residence without valid third-party consent, requiring suppression of its contents; and (3) Rule 806 permits the admission of extrinsic evidence of specific instances of conduct to impeach the credibility of an unavailable hearsay declarant, including Copperhead, when such evidence is directly probative of truthfulness.

Respectfully submitted,

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